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O.		
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Ockerson, Daniel J	303	2
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Oconee River, bridge across the, in Georgia	848	3
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	2614	8
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	917	3
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	1759	6
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Cairo, Ill	1451	5
	1996	6
Columbus, Ohio	444	2
Des Moines, Iowa	2987	9
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Gladstone, Mich	2056	6
Lincoln, Nebr., amend act	2636	8
Nashville, Tenn	1654	6
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Rock Island, Ill	1112	4
	3031	10
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Hartford, Conn	1115	4
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	1592	5
Potter, Nancy	2452	8
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Potts, Jane	54	1
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Priest, Matthew S	570	2
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	278	1
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Alexandria, La	35	1
Allegheny, Pa	413	2
	456	2
Altoona, Pa	1149	4
Americus, Ga	1525	5
Amsterdam, N. Y	1145	4
Ashland, Wis	74	1
Atchison, Kans	625	2
Atlantic City, N. J	1148	4
Aurora, Ills	586	2
Baltimore, Md	1150	4
Bar Harbor, Me	214	1
Baton Rouge, La	409	2
Battle Creek, Mich	3144	10
Beatrice, Nebr	594	2
Beaver Falls, Pa	1699	6

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To erect at (also sites, etc.)—		
Bloomington, Ill	609	2
Bradford, Pa	1906	6
Brunswick, Ga	1532	5
Buffalo, N. Y	1531	5
Burlington, Iowa	417	2
	626	2
Butte City, Mont	1869	6
Camden, Ark	606	2
Camden, N. J	2446	8
Canton, Ohio	1871	6
Cedar Rapids, Iowa	624	2
Charleston, S. C	997	3
Chester, Pa	711	3
Cheyenne, Wyo	1526	5
Clarksville, Tenn	1311	5
Cleveland, Ohio	2226	7
Columbus, Ga	29	1
Creston, Iowa	2223	7
Dallas, Tex	217	1
Danbury, Conn	999	3
Davenport, Iowa	613	2
Dayton, Ohio	2945	9
Deadwood, S. Dak	1698	6
Defiance, Ohio	1153	4
Dover, N. H	1645	5
Duluth, Minn	1013	3
Durham, N. C	2527	8
Eau Claire, Wis	622	2
Elizabeth, N. J	2257	7
Elizabeth City, N. C	2331	7
Elmira, N. Y	1156	4
El Paso, Tex	416	2
	526	2
Emporia, Kans	2635	8
Eureka, Cal	2340	7
Fargo, N. Dak	601	2
	2557	8
Fayetteville, N. C	1642	5
	2327	7
Fort Dodge, Iowa	620	2
Fort Worth, Tex	1440	5
Fredericksburgh, Va	2928	9
Fremont, Nebr	410	2
Fremont, Ohio	1529	5
	1782	6
Galesburgh, Ill	72	1
Gallipolis, Ohio	2224	7
Grand Forks, N. Dak	2558	8
Grand Haven, Mich	1609	5
	1747	6
Greensburgh, Pa	2963	9
Hamilton, Ohio	996	3
Hastings, Nebr	799	3
	1066	4
Haverhill, Mass	607	2
Helena, Mont	1070	4
Henderson, N. C	1641	5
Hoboken, N. J	590	2
Holyoke, Mass	2447	8
Hot Springs, Ark	1483	5
Hot Springs Reservation, Ark	2259	7

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Public buildings—Continued.		
To erect at (also sites, etc.)—		
Houlton, Me	219	1
Houston, Tex	1139	4
Hudson, N. Y	414	2
	900	3
Jackson, Mich	1146	4
Jacksonville, Fla	595	2
Jersey City, N. J	2448	8
Kansas City, Kans	1530	5
	2239	7
Kansas City, Mo	998	3
La Fayette, Ind	415	2
Lancaster, Pa	1686	6
Lansing, Mich	71	1
	635	2
Laredo, Tex	2633	8
Lawrence, Mass	2560	8
Leadville, Colo	2477	8
Leesburgh, Va	2636	8
Lewiston, Me	611	2
Lima, Ohio	761	3
Logansport, Ind	757	3
Los Angeles, Cal	1003	3
Lynn, Mass	220	1
Madison, Ind	713	3
	2644	8
Mammoth Hot Springs, Yellowstone National Park	1535	5
Mankato, Minn	418	2
Martinsburgh, W. Va	597	2
Menominee, Mich	1644	5
Meridian, Miss	599	2
Milwaukee, Wis	419	2
Moberly, Mo	1144	4
Muskegon, Mich	1920	6
	2926	9
Nashua, N. H	2228	7
	2258	7
Natchez, Miss	2229	7
Newark, N. J	212	1
Newburgh, N. Y	602	2
	1872	6
New London, Conn	411	2
	646	2
New Orleans, La	2760	8
Newport News, Va	1001	3
Newton, Kans	1751	6
New York, N. Y	2086	7
Norfolk, Nebr	2559	8
Norfolk, Va	593	2
Oakland, Cal	3230	10
Oneida, N. Y	801	3
Oneonta, N. Y	857	3
Oskaloosa, Iowa	2222	7
Palestine, Tex	2640	8
Paris, Tex	603	2
Patterson, N. J	621	2
Pawtucket, R. I	616	2
	905	3
Petersburgh, Va	1006	3
Philadelphia, Pa	2326	7
Piqua, Ohio	1154	4

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	640	2
Portsmouth, Ohio	1155	4
Pottsville, Pa	2457	8
Pueblo, Colo	603½	2
	2338	7
Racine, Wis.	615	2
	2541	8
Red Wing, Minn	1533	5
Reidsville, N. C	604	2
Reno, Nev	3223	10
Richmond, Ind	1157	4
Richmond, Ky	1798	6
Roanoke, Va	1012	3
Rockford, Ill	619	2
Rock Island, Ill	598	2
	2202	7
Rome, Ga	1002	3
Rome, N. Y	660	3
Sacramento, Cal	596	2
Saginaw, Mich	1005	3
	1069	4
Salem, Oregon	1646	5
Salina, Kans	612	2
Salt Lake City, Utah	1485	5
San Diego, Cal	2477	8
San José, Cal	211	1
Savannah, Ga	1000	3
Scranton, Pa	412	2
Seattle, Wash	2273	7
Selma, Ala	1147	4
Sheboygan, Wis	1004	3
	3049	10
Sherman, Tex	1138	4
Sioux City, Iowa	604	2
Sioux Falls, S. Dak	588	2
	1068	4
South Bend, Ind	623	2
Spokane Falls, Wash	674	3
	1067	4
Springfield, Mass. (shop at the National Armory at)	1008	3
Springfield, Mo	237	1
St. Albans, Vt	589	2
	710	3
Sterling, Ill	1312	5
	1537	5
Steubenville, Ohio	1152	4
Stockton, Cal	608	2
	1071	4
St. Paul, Minn	1011	3
Suspension Bridge, N. Y	1527	5
Tacoma, Wash	2274	7
Tampa, Fla	3190	10
Taunton, Mass	614	2
Tuscaloosa, Ala	587	2
Virginia City, Nev	3224	10
Walla Walla, Wash	2230	7
Waterbury, Conn	1151	4
Wausau, Wis	2639	8
Wilkes Barre, Pa	1643	5
Wilmington, Del	591	2

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Public buildings—Continued.		
To erect at (also sites, etc.)—		
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Winston-Salem, N. C	2227	7
Worcester, Mass	2272	7
Youngstown, Ohio	585	2
Zanesville, Ohio	1310	5
	1536	5
Washington, D. C., fire-proofing Smithsonian Institution at	592	2
public building for Geological Survey at	1007	3
site for public building, at	73	1
United States court-house at	2634	8
purchase of lot 10, square 683, in	2898	9
purchase of lots 11 and 12, square 689, in	3169	10
laboratory for Agricultural Department	1218	5
Watertown, N. Y., purchase of land in	2214	7
Public buildings and grounds, protection of, in the District of Columbia from destruction by fire	2078	6
Public lands, relief of settlers on	2127	7
	3160	10
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grant to Moscow, Idaho of, certain, for cemetery purposes	1506	5
relief of settlers on the Northern Pacific Railroad indemnity lands	1082	4
land for school site in Wayne County, Mich	2385	7
fix price of Government lands subject to homestead or pre-emption entry	2382	7
to forfeit certain, granted to aid construction of railroads	2215	7
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Union Pacific Railroad, lands of the	3105	10
protection of actual settlers on, in Florida	2461	8
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Public money, to provide vaults and safeguard for the security of	1584	5
Public park in the District of Columbia	870	3
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Public works, for the protection of	477	2
Pueblo, Colo., public building at	603½	2
	2338	7
Puget Sound, to establish the customs-collection district at	1799	6
Punkett, Helen	841	3
Put-in-Bay, Ohio, monument at	2142	7
Putney, Fanny A	1865	6
Puyallup Indian Reservation, certain facts relating to the	2631	8
Pyle, Eliza	2393	7
Q.		
Quapaw Indians, allotment of lands to the	559	2
Quick, George C	1103	4
Quimby, William	1235	5
Quincy, Ill., bridge across Mississippi River at	2289	7
Quinn, Edward P	1959	6
Quintard, George W., assignee	445	2
	767	3
R.		
Racine, Wis., public building at	615	2
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Ragan, John	1923	6

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Railroad crossings, to provide for, in Indian Territory	2764	8
Railroad employés and property of, for the protection of	3014	9
Railroad lands, forfeiture of certain	1179	4
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forfeit certain lands granted to aid construction of railroads	2215	7
Raleigh, N. C., to establish a United States district court at	2167	7
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Rancho Punta de la Laguna	792	3
Randall, Keziah	443	2
Randolph, Fannie B	291	2
Rariden, Nancy	1515	5
Rasor, Calvin	2672	8
Rawlingson, Lucinda	2643	8
Ray, Phillipe	1946	6
Rayner, Mrs. S. J	3238	10
Read, Henry A	1851	6
Reaney, Son & Archbold	293	2
	2789	9
Rebecca, seizure of the schooner, at Tampico	902	3
Reciprocity treaties	1827	6
Record of the War of the Rebellion, reissue of the first five volumes of the	2556	8
Rector, James H	2652	8
Reddick, Johnson	1304	5
Redfield, Stephen D	1421	5
Red Lake and Western Railway and Navigation Company, right of way through Red Lake Indian Reservation	2444	7
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Red River of the North, amend act to construct bridge across the	1481	5
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Red Wing, Minn., public building at	1533	5
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Reed, Clara	2664	8
Reed, James B	2775	9
Reed, John B	2474	8
Reed, John Green	209	1
Reed, Thomas J	2722	8
Reed, William F	959	3
Reed, William W	2669	8
Reeder, Edwin	2979	9
Reeder, William	1367	5
Reeves, A. B	1611	5
Reform in the civil service	2445	7
Regimental military post at Jefferson Barracks, Mo	583	2
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Regulate commerce:		
Amend section 22 of the act to	2121	7
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	2591	8
Amend section 22 of act to	2849	9
Regulation of commerce between the several States, etc	2604	8
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Reiner, Herman, jr		
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Revenue-cutter service, transfer of, from Treasury to Navy Department	76	1
Revenue laws, relating to the collection of revenue	6	1
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Coey, James	1951	6
Coffield, Lucy A	1555	5
Coghill, Jennie H	2339	7
Cole, Betsey E	1264	5
Collier, Ruth	2237	7
Collins, Emily P	1948	6
Collins, Oscar S	1418	5
Colson, Abbie A	1935	6
Colston, Henry	1128	4
Compton William	2389	7
Conley, Mary	664	2
Connally, Sarah	939	3
Connery, Arthur	2118	7
Connolly, John	2246	7
Constable, Margaret	1721	6
Cook, Halem L	2255	7
Cook, Mary B	3150	10
Cook, Nellie R	1498	5
Cook, Zo S	1781	6
Coon, Archibald F	1853	6
Coon, Mrs. Leonora	1772	6
Cooney, Margaret	2571	8
Cooper, Chloe	843	3
Cooper, Harriet E	952	3
Coons, Allen	371	2
Cotton, Edwin	2598	8
Cotton, Joseph O	1420	5
Courtney, Ellen	2442	7
Cox, Daniel J	63	1
Crawford, Zachariah T	1397	5
Creed, Catharine	549	2
Cronk, William V	44	1
Crook, Mary	2906	9
Crook, Mary T	2580	8
Crum, Peter R	1972	6
Culhan, Patrick	844	3
Culman, Daniel A	518	2
Cummings, William H	835	3
Cunningham, Alice E	938	3
Cushing, Mary H	2996	9
Curtis, Mary H	1777	6
Cuthbert, Sarah	706	3
Danford, Tunis S	2470	8
Daniels, Mrs. M. E	2853	9
Dascomb, Joseph	1932	6
Davis, Albert P	3162	10
Davis, Alexander G	979	3
Davis, Fanny L	1998	6
Davis, John B	1730	6
Davis, John P	1243	5
Day, Harman	723	3
Dean, David	160	1
Dean, John	974	3
Dean, Susan	2115	7
Debart, John	57	1
Delap, Amanda J	1837	6
Deming, Frank	366	2
Dennis, Thomas	520	2
Denny, Alfred	1580	5
Denton, Chester	1270	5
De Wald, George W	388	2
Dewey, Helen E	397	2

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Devine, Sarah	951	3
Devlin, Peter	1414	5
Dill, Emma	833	3
Dimick, Sophia J	1395	5
Dimond, Morgan	1952	6
Ditto, Mrs. Sue	1845	6
Dixon, Annie E	1442	5
Dixon, Rachel	1095	4
Dockham, Mary	704	3
Dodge, Elizabeth	2768	9
Dodge, Martha J	3152	10
Domm, Elizabeth	1578	5
Donaldson, Harriet E	2578	8
Donohue, Mary	946	3
Donovan, Daniel	1757	6
Dorlos, Nancy J	2757	8
Doty, Daniel	41	1
Doud, Mary A	2022	6
Dougherty, Lawrence	933	3
Douglass, Benjamin F	1544	5
Dowling, Ellen White	2337	7
Downey, Ann	1517	5
Doyle, Catharine	2026	6
Drake, Mrs. Eliza J	699	3
Drake, Quincy J	1956	6
Draper, Gustavus Alonzo	359	2
Drumheller, David	2951	9
Duerson, Charles	1640	5
Duke, Sallie T	972	3
Dunn, John	1104	4
Dunn, William	2081	6
Dunn, William J	192	1
Durand, Margaret	2282	7
Dutton, Alexander F	3086	10
Eadie, Mary J	2468	8
Eagle, George G	545	2
Earp, Elizabeth	987	3
Eaton, Augustus W	1234	5
Eaton, Lydia A	1371	5
Ebert, William C	1944	6
Eckle, Johanna	497	2
Edmands, Catherine	2762	8
Edwards, Alvira A	663	2
Edwards, Nelson G	130	1
Edwards, William	965	3
Egan, Thomas	2471	8
Eichele, Celia	2572	8
Elam, Elisha L	524	2
Elgar, Fanny	665	3
Elmendorf, William	2465	8
Ellis, Warner M	962	3
Emens, Mrs. Harriet Dada	1563	5
Emmert, Philip H	2037	6
Erskine, Julia A	1512	5
Esdon, Mary Morgan	1239	5
Evans, John K	1561	5
Evans, Matilda	2464	8
Everett, Frances E	1677	6
Everts, George	3091	10
Ewald, Mrs. Mary	2825	9
Ewing, Charles	1962	6
Ewing, Elmore E	1569	5

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Ewing, Virginia L. M	1581	5
Faulk, George	51	1
Feathers, Allen	661	2
Felch, Amanda M	2280	7
Fenstermacher, Rachael A	2009	6
Ferguson, Andrew J	287	1
Ferguson, Delilah	737	3
Ferguson, Harrison	1126	4
Ferguson, John S	3044	10
Ferguson, Mary	1958	6
Ferrin, James S	492	2
Featherstone, J. G	1992	6
Finch, Roxanna	821	3
Fink, Mrs. Clementine	2998	9
Finnerty, Ellen	3070	10
Fisher, Joseph	1407	5
Fisher, Joseph D	1843	6
Fitzclarence, George	517	2
Fitzgerald, James	826	3
Fitzgerald, Mary	736	3
Fitzgerald, Mary Ellen	1711	6
Flaherty, Margaret	3161	10
Fleming, James H	507	2
	1495	5
Fleming, Julia	137	1
Fletcher, Malvina P	705	3
Fletcher, Margaret J	53	1
Fletcher, William Ellsworth	1276	5
Fogg, M. J	515	2
Fogler, Prentiss M	2568	8
Foley, Bridget	1765	6
Ford, Ann	141	1
Foreman, Malinda	943	3
Forsyth, Alexander	2220	7
Foster, David	14[illegible]6	5
Foster, Davis	1575	5
Foster, Mary J	1559	5
Foster, Martha A	2429	7
Fought, Simon J	2438	7
Foust, Andrew J	1994	6
Fowler, Clara	2119	7
	2879	9
Freeman, Anson	1372	5
Freeman, Julia W	2234	7
Freland, John J	149	1
Frémont, Jessie Benton	2793	9
	2877	9
French, Amanda F	1107	4
Frey, Clara	360	2
Frohlin, John	2467	8
Fryer, Lydia F	2344	7
Fulton, Emma	1769	6
Funk, Christopher C	960	3
Furman, Edwin S	123	1
Garcia, Manuel	52	1
Galloway, Fletcher	2102	7
Gardner, Susan M	1275	5
Gardner, Theodore	1550	5
Gardner, William	1503	5
George, John	2348	7
George, Lucy A	1370	5
Gibson, Elizabeth O	140	1

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Gilman, Francis	830	3
Glass, Eliza J	982	3
Goff, James	1744	6
Gohagan, Thomas H	1098	4
Gordon, Mrs. Louisa M	2670	8
Goudy, Jacob E	47	1
Grace, John	2106	7
Graff, Daniel	2688	8
Graham, J. F	2795	9
Graham, Mary E	1930	6
Greely, Philip T	3051	10
Green, Mary A	1715	6
Greene, Mrs. Angeline	1516	5
Gregg, Henrietta M	1766	6
Griese, Wilhelm	1957	6
Grigsby, Washington	3155	10
Griswold, Mary Ann	2040	6
Griswold, Mathew C	1712	6
Groff, Elizabeth A	152	1
Gross, Nancy M	1761	6
Grove, John H	1847	6
Grow, William S	1376	5
Gudgell, Cynthia A	2576	8
Guffey, Ellen	1732	6
Gullett, James M	390	2
Gushwa, Elizabeth	2390	7
Haarstick, Anna	55	1
Haight, Ursula Lucretia	2111	7
Hale, Jonathan D	2277	7
Hale, Lucy	193	1
Hale, Presley	2673	8
Hale, Warren R	1405	5
Hall, John S	3009	9
Hall, Mary O	1241	5
Hamill, William	1493	5
Hamilton, Harriet B	3163	10
Hamilton, Jesse G	2006	6
Hamilton, Joseph K	377	2
Hamilton, Sarah	823	3
Handerhine, Mrs. Bridget	2019	6
Hanlon, E. T	2675	8
Hanneman, Mrs. Caroline	2901	9
Hansel, Josephine S	3066	10
Hanson, Olina	836	3
Harbison, Ella	969	3
Harding, Jerusha P	2753	8
Harriman, Matilda M	3090	10
Harrington, Montraville A	1955	6
Harris, Martha A	1131	4
Harrison, Charity P	2687	8
Harrison, Sarah A	935	3
Harney, Mary E	1605	5
Hart, Emma A	350	2
Hart, Frederick	2232	7
Hartman, George F	1491	5
Hartranft, Sallie Douglass	1725	6
Hassendeubel, Apollonia and Maria	2935	9
Hays, Caroline	1841	6
Haynes, Edward	368	2
Head, Thelbert H	1838	6
Healey, Henry G	1548	5
Healy, Edward	1410	5

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Hechtman, Olive M	2352	7
Heckler, Elizabeth	135	1
Helston, Eugenia A	46	1
Henderson, Joseph S	2244	7
Henney, Maria J	1403	5
Herbert, Stewart	355	2
Herbst, Theresa	136	1
Herod, R. W	1566	5
Herrick, Salina B	3165	10
Hibbard, E. A	2663	8
Hill, Mrs. Zelinda	1417	5
Hilliker, Benjamin F	2008	6
Hindman, Martha	1492	5
Hix, Alonzo	2742	8
Hodgman, Ruth W. Keene	2099	7
Hohmann, Pauline	732	3
Holland, Mary A	724	3
Hollingsworth, Mrs. Elizabeth M	2934	9
Hood, Lydia	1756	6
Hooke, Mary A	2278	7
Hooper, Mrs. M. A	1556	5
Hopkins, Mary F	1760	6
Hopkins, Thomas H	2002	6
Hopper, Andrew	2353	7
Horrell, Anna and Retta	1729	6
Horton, Mrs. A. J	2110	7
Howard, George S	2005	6
Howell, Katherine W	3153	10
Hubbs, Etta	2990	9
Hudson, Martha N	3164	10
Hughes, Abigail	2937	9
Hull, Francis M	984	3
Hull, James A	2105	7
Hummer, William D	62	1
Humrichouser, Isaiah	58	1
Hurlbert, J. Phil	1406	5
Hurst, William L	1833	6
Huskill, O. E	2357	7
Hunter, Francis Marion	1129	4
Hunziker, Gottlieb	2342	7
Hutchinson, George W	986	3
Hyde, Mrs. Mary	1767	6
Ismande, Henry	2032	6
Irvin, Mary A	2946	9
Irwin, James T	682	3
Ives, Laura J	2443	7
Jackson, Abraham W	1754	6
Jackson, Esther A	521	2
Jackson, Richard	2784	9
Jackson, Stephen H	3003	9
Jacobs, Isaac N	3068	10
Jacoby, Margaret A	973	3
James, Laura	2878	9
James, Rev. Thomas	2782	9
Jerome, Alfred A	2437	7
Johnson, Abbie D	127	1
Johnson, Ada	1551	5
Johnson, James	2692	8
Johnson, John A	2765	8
Johnson, Mary E	2098	7
Jones, Adele	1734	6
Jones, Elizabeth A	934	3

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Jones, Martha E	818	3
Jones, Mary D	2785	9
Jordan, J. N	950	3
Judah, Mrs. Maria B	2587	8
Judd, Henrietta	370	2
Judd, Oliver H.	1133	4
Junk, Rozalia	1718	6
Kabler, James E	1565	5
Karger, William	1504	5
Kayler, Mary	394	2
Kearney, Stephen L	3096	10
Kelly, Elizabeth	1496	5
Kelly, Thomas	134	1
Keen, Jonas H	2130	7
Kent, Daniel H	1776	6
Kernan, Charles	1244	5
Kerr, Robert C	2021	6
Keys, David	1378	5
Kidwiller, Frederick	1445	5
Kilday, Elijah	1800	6
Kilpatrick, Louisa V	1353	5
King, Ellen G	1423	5
King, Henry A	2392	7
King, Matilda C	693	3
Kinney, Mary	1553	5
Kinsley, Mary A	146	1
Kirkpatrick, Sanford	2667	8
Konkle, Andrew J	1830	6
Knight, Sarah L	2566	8
Knopp, Henry H	1572	5
Kridler, Charles W	1570	5
Kunzip, Christian	1274	5
Lamburg, Ann E	158	1
Lang, Mary Ann	1272	5
Langdon, Hannah R	684	3
Langstaff, Barbara	966	3
Langston, Andrew	1928	6
La Preaze, Joseph	1250	5
Lathe, James W	1384	5
Law, James Y	1271	5
Lawrence, Catharine S	2496	8
Leach, Martha	2936	9
Leasure, Nancy W	1723	6
Leavey, Morris	2874	9
Lee, Catherine M	745	3
Lee, Maria T	1704	6
Lefebree, Mary A	730	3
Le Fevre, O'Herrick	1377	5
Lemley, Bazel	2217	7
Leo, Hannah	2318	7
Le Roy, Mary B	2114	7
Levy, Rachel	1438	5
Lewis, Horace B	128	1
Lewis, Merritt	695	3
Lincoln, Levi M	182	1
Lindel, John L	1945	6
Lindt, John	3097	10
Lippy, David A	155	1
Lischewsky, Florian	156	1
Lloyd, Mrs. Belinda	1514	5
Loewinger, Johanna	1577	5
Lozier, John S	976	3

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Lusk, Jane A	700	3
Lutman, David H	516	2
Lyford, Alfred A. and Arthur D	727	3
Lyman, Catlena	502	2
Lynch, Bridget	955	3
Mabb, Albert	839	3
Macke, Frederick H	2433	7
Macomb, Anna Rogers	2270	7
Madden, Barbara	505	2
Mahler, John F	2216	7
Malin, James	2435	7
Malloy, Margaret	2113	7
Manley, Ira	2454	8
Mansfield, Betsey	1719	6
Marchand, Margaret D	2218	7
	2872	9
Marcy, Eliza	1212	5
Marshall, Delia W	132	1
Martin, Harriet E	2573	8
Martin, Ida L	694	3
Martin, Oliver P	1574	5
Marvin, Jay	926	3
Mathias, John O	1764	6
Mattocks, Anne	1934	6
Maulding, Daniel M	59	1
Maxwell, Thomas N	362	2
Mayberry, Mary	1238	5
Mays, William H	1093	4
McAllister, Amelia H	1543	5
McArthur, Polly	2251	7
McCamley, Sarah C	708	3
McChesney, Mary D	1961	6
McClellan, Ellen M	2881	9
McCloud, Frances Jane	1368	5
McConnell, Hettie	2763	8
McCool, John	288	1
McCormick, Alexander	698	3
McCormick, Hugh S	1398	5
McCormick, Reuben A	1846	6
McCowan, Allen	183	1
McCowan, Mary	834	3
McCreary, Ann	944	3
McCreery, Col. William B	2103	7
McCulloh, Mrs. Maria L	2350	7
McCusker, James	503	2
McDonald, John O., alias William Barnes	2256	7
McGarvey, Michael	3151	10
McGregor, John	2532	8
McGrievey, Anastasia	494	2
McHugh, Hugh	1938	6
McIlwain, Martha	157	1
McIntyre, Byron R	918	3
	1394	5
McIntyre, Clara H	2565	8
McKay, Napoleon B	383	2
McKinney, James M	485	2
	1455	5
McKinney, Richard D	43	1
McLain, Conrad	2236	7
McLaren, John	1774	6
McLaughlin, Augustin	289	1
McLaughlin, John H	842	3

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McMann, Harriet	703	3
McManus, Catharine	1960	6
Meade, Elnathan	1937	6
Meader, Sarah	376	2
Meadown, J. W	1134	4
Means, Dr. James H	2952	9
Melvin. James	2463	8
Metcalf, T. G	1963	6
Metcalfe, Nannie W	467	2
Meyer, Arnold	1100	4
Michler, Sallie M	1457	5
Miller, Carrie M	2025	6
Miller, Daniel M	2905	9
Miller, Mary L	3154	10
Miller, Mary S	2873	9
Miller, Sallie	2281	7
Miner, Sallie J	1392	5
Minter, Margaret P	828	3
Mitchell, James A	2091	7
Mitts, Susanna	56	1
Monroe, James M	2120	7
Moore, Alexander	3089	10
Moore, Charles H	1224	5
Moore, Helen A., and minor children of	379	2
Moore, Isaac	1545	5
Moran, John	2754	8
Moorhead, Abner	1520	5
Morgan, John	2453	8
Morgan, Wick	3039	10
Morris, Catherine	523	2
Morrison, Belle	983	3
Morrison, John C	2117	7
Morton, T. A	2455	8
Mosher, Ann M	2575	8
Moulder, David	1127	4
Mower, Betsey A	3041	10
Moy, Nicholas	522	2
Mudgett, Mrs. Fannie W	697	3
Mueller, Albert	553	2
Munn, F. H	548	2
Murphy. Barbara	557	2
Murphy, Mary	726	3
Murry, George	2097	7
Muse, Eben	2863	9
Mussman, Ann E	147	1
Myers, James A	1576	5
Myers, Margaret	2434	7
Myers, Margaret E	2982	9
Mykins, Mary A	2338	7
Nagle, John	357	2
Naron, Levi H	1099	4
Nash, Mary L	2751	8
Near, Mrs. Adelia	1802	6
Nelson, Thomas	2531	8
Neuninger, Lena	2038	6
Newcomb, Mary A	2252	7
Newhall, Betsey F	221	1
Newhouse, Mrs. Elizabeth P	2779	9
Nichols, Alice	1518	5
Nicholson, Mary H	866	3
Noe, Sarah Ann	1223	
Noll, Mary E	189	1

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Norman, Lucy A. M	734	3
Norton, Charles A	1745	6
Nottage, Mary J	725	3
Nourse, William M	1936	6
Noyes, Evaline A	2023	6
Nutting, Charlotte B	2391	7
Obergfell, George	1382	5
O'Brien, W. H	2129	7
O'Donnell, James	919	3
Ogden, Elizabeth	840	3
Olive, Minerva Jane	499	2
Oliver, Jehiel J	707	3
Olmstead, Lucy R	133	1
O'Malley, Catharine	386	2
Onderdonk, Emily	2233	7
O'Regan, Mathew	550	2
O'Riley, Bridget	389	2
Orr, James H	2758	8
Osborn, Eugene A	3229	10
Osborn, William A	2283	7
Otis, Lillis	1229	5
Owen, Clara M	722	3
Padget, George W	920	3
Padgett, Mrs. Olive	352	2
Page, Alonzo L	729	3
Palmer, N. E	2356	7
Palmer, Sarah E	2219	7
Pape, Christian	2347	7
Pardy, John	1249	5
Parker, Dwight	1773	6
Parkes, Amanda E	2534	8
Parnell, Delia T. S	1364	5
Parrish, Daniel W	45	1
Patterson, Jane W. and Sarah L	1228	5
Patton, E	1941	6
Pearce, Francis	1546	5
Penrod, Henry H	1549	5
Pensions, increase in certain cases	13	1
increase for deafness, etc	2953	9
laws relating to	3204	10
	629	2
to prisoners of war	226	1
Perkins, Joseph	733	3
Personeus, Mary	61	1
Peterson, Peter	954	3
Petrie, John R	356	2
Phelbrook, Eliza A	2823	9
Phillips, Belinda Jane	2397	7
Phillips, Elizabeth	1954	6
Phillips, Julia E	702	3
Philip, Sarah H	2728	8
Piatt, Mrs. Theodora M	1568	5
	1759	6
Pickard, John	1393	5
Pierce, Israel J	1842	6
Pierce, Joseph H	546	2
Pierce, Margaret E	2938	9
Pitner, George W	949	3
Platt, Anna	1720	6
	2355	7
Platz, Charles A	148	1
Pollock, Mary	2904	9

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Pool, Mariah L	1552	5
Post, Asher	372	2
Potter, Henry L	1380	5
Potter, Nancy	2452	8
Pottle, Emily T	667	3
Potts, Jane	54	1
Powell, Sally	956	3
Pratt, Margaret	2978	9
Pratt, Norman B	1571	5
Probert, Anna A	947	3
Punkett, Helen	841	3
Pyle, Eliza	2393	7
Quick, George C	1103	4
Quimby, William	1235	5
Quinn, Edward P	1959	6
Radford, Mary L	2112	7
Rariden, Nancy	1515	5
Rasor, Calvin	2672	8
Ray, Phillipe	1946	6
Redfield, Stephen D	1421	5
Reed, Clara	2664	8
Reed, Catherine	936	3
Reed, John B	2474	8
Reed, Thomas J	2722	8
Reed, William F	959	3
Reed, William W	2669	8
Reeder, William	1367	5
Revised Statutes, amend sections 4483 and 5486 of the	1102	4
amend section 4693 of the, State militia	186	1
Reynolds, Jane	129	1
Reynolds, John W	1579	5
Rice, Agnes R	3054	10
Rich, Nelson	1964	6
Richardson, Eliza	509	2
Richardson, William	1441	5
	1494	5
Rickards, Sallie E	2108	7
Rider, George H	3001	9
Riley, Elizabeth M	3047	10
Ringgolds, Mary C	3228	10
Riseden, Isaac	2674	8
Ritter, Isadora	2900	9
Robinson, Mary	1755	6
Robinson, Polly	380	2
Robinson, Thomas F	731	3
Roe, Delila	2358	7
Roedell, Herman F. A	953	3
Rogers, Oscar K	1313	5
Rose, David	727	3
Rowe, Mrs. A. A	544	2
Rowley, Thomas A	3149	10
Ruble, Caroline	1374	5
Ruch, Solomon R	2010	6
Ruffner, Ann	1227	5
	1728	6
Rumsey, Elizabeth	2430	7
Rundlett, Annie D	1710	6
Sanborn, Lucian L	399	2
Sanders, George L	519	2
Sanders, Mary J	2249	7
Sapp, Catherine	40	1
Sattler, Catharine	1542	5

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Sayre, Lydia W	1246	5
Schaub, Christian	2020	6
Schiedel, Stephen	191	1
Schimmelfennig, Sophia	381	2
Schirge, Mary Ann	680	3
Schnappinger, Barbara	498	2
Scoopmire, Joseph H	2538	8
Scott, Charles E	1089	4
Scott, Francis M	391	2
Scooten, D. J.	2396	7
Scudder, John	1714	6
Searles, Enos J	2570	8
Seeger, John	385	2
Seeley, W. W	1717	6
Seiter, August	1366	5
Selbach, Mary A	145	1
Selden, Louise	2939	9
Selfridge, Emma L	679	3
Sells, Frederick B	964	3
Sellers, Joseph B	2904	9
Service pensions, to soldiers of the rebellion, etc	1160	4
Seyfforth, Caroline G	1248	5
Shafer, Smith J	2577	8
Shandal, Theodore J	285	1
Shaw, James	916	3
Shea, Ellen	506	2
Shears, Ellen	142	1
Shelden, Sarah	666	3
Shepherd, Hannah B	3168	10
Shiveley, David	1801	6
Sholl, Louisa M	2039	6
Showalter, James H	1831	6
Shrake, Elizabeth	622	2
Shuman, Anna S	2975	9
Shumway, Mary	1268	5
Sidwell, Jeremiah M	2973	9
Silvers, Angelina	1513	5
Sippell, Louisa M	1541	5
Sloat, Charles T	2472	8
Smail, Sarah A	1499	5
Small, Charlotte	1237	5
Smalley, Mary W	1381	5
Smith, Douglass	512	2
Smith, Eben E	2298	7
Smith, Francis E	1560	5
Smith, George B	500	2
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San Diego, Cal	2477	8
San José, Cal	211	1
Savannah, Ga	1000	3
Scranton, Pa	412	2
Seattle, Wash	2273	7
Selma, Ala	1147	4
Sheboygan, Wis	1004	3
	3049	10

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COMMITTEE ON PUBLIC BUILDINGS AND GROUNDS—Continued.		
Public buildings, to erect at (also sites, etc.)—Continued.		
Sherman, Tex	1138	4
Sioux City, Iowa	604	2
Sioux Falls, S. Dak	588	2
	1068	4
South Bend, Ind	623	2
Spokane Falls, Wash	674	3
	1067	4
Springfield, Mass. (workshop at National Armory)	1008	3
Springfield, Mo	237	1
St. Albans, Vt	589	2
	710	3
Sterling, Ill	1312	5
	1537	5
Steubenville, Ohio	1152	4
Stockton, Cal	608	2
	1071	4
St. Paul, Minn	1011	3
Suspension Bridge, N. Y	1527	5
Tacoma, Wash	2274	7
Tampa, Fla	3190	10
Taunton, Mass	614	2
Troy, N. Y	216	1
Tuscaloosa, Ala	587	2
Virginia City, Nev	3224	10
Walla Walla, Wash	2230	7
Waterbury, Conn	1151	4
Wausau, Wis	2639	8
Wilkes Barre, Pa	1643	5
Wilmington, Del	591	2
Wilmington, N. C	2406	7
Winston-Salem, N. C	2227	7
Worcester, Mass	2272	7
York, Pa	610	2
Youngstown, Ohio	585	2
Zanesville, Ohio	1310	5
	1536	5
Washington, D. C., fireproofing Smithsonian Institution at	592	2
public building for Geological Survey at	1007	3
site for public building at	73	1
United States court-house at	2634	8
purchase of lot 10, square 683, in	2898	9
acquire lots 11 and 12, square 689, in	3169	10
laboratory building for Agricultural Department	1218	5
Watertown, N. Y., purchase of land in	2214	7
Aberdeen, S. Dak., purchase of certain lands by	1299	5
Alaska, town sites in	2450	8
Alvarado Cemetery Association	1608	5
American bison and other animals, protection of, etc	1876	6
Andrews, Christopher C	21	1
Birmingham, Sheffield, and Tennessee River Railway Company, right of way across public lands	2741	8
Buffalo, Wyo., purchase of public lands by	1117	4
California, grant 5 per cent. on sales of public lands to	83	1
Colorado, relating to lands occupied by Indians	2811	9
Colorado Springs, grant of land to	424	2
Dealy, David	2414	7
Eastport, Me., public park at	2268	7
Fees of registers and receivers, amend laws relating to	564	2
Fort Hays, convey certain lands in, to Kansas	768	3
Fort Sisseton, grant lands and buildings thereon, to South Dakota	2178	7
Hot Springs, Ark., regulate granting of leases at	2960	9

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Kansas, confirm certain sales of Kansas trust and diminished reserve lands in	2914	9
Manual of surveying instructions	2266	7
Montana, additional land districts in	31	1
Moscow, Idaho, grant of lands for cemetery to	1506	5
Nebraska, additional land districts in	484	2
	847	3
North Dakota, additional land office in	2240	7
school lands in	2267	7
North and South Dakota, boundary line between	1914	6
Ogden, Mary Alice White	314	2
Public lands, entry of, by incorporated cities	1217	5
fix price of, subject to homesteads	2382	7
protection of actual settlers on, in Florida	2461	8
relief of settlers upon	2127	7
	3060	10
relief of settlers on the Northern Pacific Railroad indemnity lands	1082	4
restoration of certain, to the public domain	1039	3
Public park, Yellowstone River, amend sections 2474 and 2475 of the Revised Statutes relating to a	1454	5
Railroad land grants, forfeiture of certain	1101	4
	1179	4
	2215	7
Revised Statutes, amend section 2294 of the	405	2
amend sections 2275 and 2276 of the	2384	7
Rio Grande Junction Railway Company	2812	9
San Francisco, Cal., relinquish certain lands to	3020	9
Sault Ste. Marie, Mich., title to certain lands in	2383	7
Sechler, John	584	2
Surveyor-general, to create the office of, in North and South Dakota	1080	4
Swamp and overflowed lands	422	2
Talkington, Isaac W	407	2
	1479	5
Timber-culture laws, to repeal	317	2
Union Pacific Railroad, lands of the	3105	10
Wayne County, Mich., grant land for school site in	2385	7
Washington, additional land districts in	1081	4
Wisconsin, sale of certain lands in	2807	9
Witnesses before registers and receivers	313	2
Wyoming, additional land districts in	470	2
disposal of abandoned military reservations in	1116	4
Younkin, Moses	2414	7
COMMITTEE ON RAILWAYS AND CANALS—		
Portage Lake Canals, purchase of the	1025	3
Railroads, employés and property of, for the protection of	3014	9
Ship canal around the falls of Niagara	1430	5
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Aransas Pass, improving	1902	6
Columbia River, cancellation of contract for the delivery of stone for the improvement of the	904	3
Galveston, Tex., completion of the improvements of the harbor at	1672	6
Louisville and Portland Canal Basin	1024	3
Milwaukee, Wis., removal of obstructions in the harbor at	384	2
Mississippi River, improvement of the	1743	6
Missouri and Columbia Rivers, removal of obstructions in the	16	1

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Navigable waters, to prevent obstruction of, and to protect public works, etc	1685	6
Ohio River and its tributaries, obstructions of navigation in the	3243	10
Portage Lake, Michigan, new harbor lines in	642	2
	2370	7
River and harbor appropriation bill	1488	5
St. Mary's River and Hay Lake Channel, appropriation for improving the	1661	6
Texas, construction of a deep water-harbor on the coast of	2371	7
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Bureau of Pensions, management of the	2835	9
Kittery navy-yard, relating to the	2911	9
Rules of the House of Representatives	23	1
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Arizona, additional associate justices of the supreme court of	1162	4
funding act of	471	2
issue of bonds by Maricopa County	720	3
	2600	8
leasing of school and university lands in	18	1
Arizona and New Mexico, fees of certain officers of	487	2
Courts, clerks, marshals, and attorney of, etc	321	2
Idaho, admission of	1064	4
county seat of Shoshone County	644	2
additional associate justice of the supreme court of	234	1
wagon road between Mount Idaho and Little Salmon Meadows	204	1
Indian Territory, organization of, etc	66	1
North Dakota, expense of constitutional convention of	2034	6
Oklahoma, organization of	66	1
town-site entries in	4	1
temporary government for	205	1
Revised Statutes, amend section 5352 of the, relating to bigamy	1811	6
South Dakota, expense of constitutional convention of	1824	6
Territories, relief of municipalities in the	1675	6
Utah, increased indebtedness for Ogden	808	3
Washington, expense of constitutional convention of	1819	6
Wyoming, admission of	39	1
COMMITTEE ON WAR CLAIMS—		
Abby Ellen, owners of brig	2586	8
Adams, O. F	567	2
Albright, W. R	109	1
Aldrich, E. J	302	2
Allard & Crozier	96	1
Allen, Amos L	3184	10
Allen, Lewis D	1478	5
	1599	5
Alsbury, Edward P	1169	4
Alsup, John F	3032	10
Archer, Henry W	1194	4
Army, certain officers and enlisted men of the	91	1
Ashe, John B	2583	8
Atkins, William H	2065	6
Atkinson, Richard	568	2
Austin, Sterling T	3072	10
Badeaux, Ulger V., and others	2415	7
Banks, Charles	2449	8
Bank of Louisiana, creditors of the	2715	8
Battelle & Evans	1910	6
Beard, J. D., and others	1603	5
Berks County Agricultural Society	2522	8
Berry, Samuel	1170	4
Beuter, Capt. Francis A	230	1

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Bigley, Nicholas J	346	2
	3213	10
Bishop, James	2206	7
Black, Thomas	34	1
Blackman, Luther M	880	3
Blades, William H	908	3
Blacke, John W	2625	8
Blue, Solomon	2954	9
Boss, Andrew J	2484	8
Botsford, J. K	2075	6
Bounties, to volunteers	92	1
claims for	2854	9
Boutwell, D. W	1183	4
Bowers, Charles F	569	2
	1477	5
	2858	9
Bradley, Horace	2441	7
Bradshaw, Seth	2309	7
Brassfield, J. L	2300	7
Bridgewater, P. H.	2303	7
Briscoe, Jackson	2062	6
Brooks, John G. W	2204	7
Brooks, William H. H	2706	8
Brott, George F	2306	7
Brown, George	332	2
	2621	8
Brown, John T	2787	9
Brown, Thomas J., and others	2859	9
Bryan, Caleb	248	1
Buder, Edward A	3059	10
Bugg, J. H., and others	1021	3
Burdett, Augustus P	3172	10
Burton, William	309	2
Bushby, William	271	1
Butler, William, & Co	2714	8
Bybee, Thomas M	1469	5
Cain, J. L., and others	95	1
California, Oregon, and Nevada, to reimburse the States of	2553	8
Cameron, Emma S	1591	5
	1816	6
Camp Tylor, Cook County, Ill., owners and occupants of	2705	8
Carlin, Mary, and others	1604	5
Carlton, Henry	879	3
Carmach, Joseph W	1198	4
Carter, A. B	1186	4
Carter, Robert	1435	5
Catholic Church at Dalton, Ga	331	2
Macon City, Mo	1597	5
	2420	7
Cayes, Bertrand and Gaudin	1468	5
	1598	5
Certain soldiers and sailors of the late war	104	1
Chesapeake Female College	2895	9
Choice, J. H	1467	5
Choteau, Charles P	2313	7
Christian Church of Henderson, Ky	1017	3
Church and school buildings, claims for	111	1
Citizens' Bank of Louisiana	106	1
Claims, allowance of certain, for stores, and supplies taken	2611	8
under Bowman act	491	2
against the Government	250	1
	788	3

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Clapp, Sarah A	2933	9
Clark, James S	2380	7
Clark, Stephen D	1433	5
Clawson, William	2608	8
Claycum, Conrad	2307	7
Clements, Caleb R	3240	10
Clift, William	881	3
Coffey, Mrs. Mary F	2305	7
Collards, W. H., and others	269	1
College of William and Mary, Virginia	3018	9
Columbia Bridge at Columbia, Pa	2521	8
Connell, Hiram D., and others	3240	10
Cook, Matilda	100	1
Corbett, Sewell B	3013	9
Core, Andrew S	2619	8
Cosgrove, James	810	3
Cothes, H	3023	9
Courtis, Maud Carlton	879	3
Cousens, George Lewis	2417	7
Cowherd, W. H	2310	7
Crider, H. H	1354	5
Crider, S. F	2205	7
Cronk, Charles W	3156 3231	10 10
Cumberland Female College	2647	8
Cummings, Doyle & Co	273	1
Cynthiana, Ky., destruction of property at	1277	5
Dace, Michael A	907	3
Danolds, Charles A	1172	4
Davis, Enoch	746	3
Davis, Mark	88	1
Dearmon, William A	2648	8
De Leon, Agnes and Maria	1184	4
Deucatte, Oden	1464	5
Dickerson, Davidson, and others	2618	8
Dillingham, C. T	2311	7
District of Columbia Volunteers, bounty to the	319	2
Donahoe, Mrs. M. J	2581	8
Donnell, George O	1589	5
Doyle & Co	273	1
Doyle, Margaret	2742	8
Doyle, William	3191	10
Dorr, John W., sr	94	1
Duncan, Andrew J	1300	5
Durham, Milton J., administrator	3188	10
Dyer, Rachel	634	2
Eddy, John M., and others	283	1
Ellison John	2304	7
Ennis, William B	2771	8
Farrar, C. C., and others	1795	6
Faulconer, John H	2524	8
Fels, Samuel	97	1
Female nurses, war of the rebellion	282	1
First Baptist Church, of Cartersville, Pa	329	2
First Kansas Colored Volunteers	3157	10
First Methodist Church, of Jackson, Tenn	1286	5
Fisher, William	482	2
Florence Masonic Lodge of Florence, Ala	1189	4
Fonden, Andrew C	2613	8
Foster, John	2193	7
Franklin, Mesack, administrator	3240	10
Frazier, John J	2301	7

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Freedley, Henry W	1195	4
French, Henry S	311	2
Frizell, James S	1347	5
Frobel, Anna S. and Elizabeth D	2679	8
Fuller, John	460	2
Gallagher, Charles	2159	7
Galland, Washington	2609	8
Gallup, Asa O	1193	4
Garrand, T. T	2500	8
German Evangelical Church of Martinsburgh, W. Va	1166	4
Gibson, William F	2677	8
Gill, Elizabeth A	3021	9
Glassie, D. M. and Minna H	2439	7
Glenn, J. C	1345	5
Goude, E. W., and others	2067	6
Grant, Daniel	2374	7
Graves, Mrs. N. C	1470	5
Graves, Rosa	2308	7
Greer, J. S. O. G., and others	2948	9
Greene, Henry A	328	2
Gregory, James A	101	1
Grimes, Malinda	272	1
Grivot, Maurice	270	1
	639	2
Groom, William G	716	3
Gummo, John W	886	3
Hackney, B. R	274	1
Haigh, A. V., and others	2859	9
Haldeman, M. E	2422	7
Hall, Goff A	1412	5
Hall, Warren	105	1
Halpin, William G	3027	10
Hamilton, G. Dwight	1898	6
Hance, Isabella, administratrix	308	2
	1796	6
Hardaway, Alice, and others	3240	10
Hardmond, Sally	275	1
Harper, A. W	1016	3
Harris, Nathan J	2612	8
Harris, T. D	2423	7
Harris, Thomas D	203	1
Hartman, Jesse P	2819	9
Hays, Ephraim	2440	7
Hazen, G. M., and others	2620	8
Heflebower, John	572	2
Heiskell, Mrs. Ann E	1601	5
Henkel, Philip	1909	6
Hennessy, Timothy	1918	6
	3104	10
Henry, William M	2607	8
Henry, W. S	2162	7
Herbert, Mrs. Eliza E	750	3
Herr, A. H	2617	8
Hewitt, Henry J	268	1
Hickman, Eliphlet	2896	9
Hill, George, jr	468	2
Hill, Levi	458	2
Hobbs, Thomas M., and others	2165	7
Hoffman, R. H	1633	5
Holland, Mrs. Mattie S	2194	7
Holloway, John G., executors of	2721	8

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Honeycut, Stephen M	2916	9
Howe, John C	454	2
Hubbard, Robert	2312	7
Hughes, William	202	1
Hundley, William T	1817	6
Import duties, to refund to State of New York, on arms imported	103	1
Indian hostilities, to reimburse certain persons in Nevada for suppression of	3185	10
Jackman, Mrs. Louisa	3232	10
Jackson, Miss., Roman Catholic Church at	2843	9
Jefferson, J. W	2822	9
Jeffrey, Rosa Vertner	2700	8
Johnnot, William, and others	2585	8
Johnson, A. S., administrator	3170	10
Johnson, Hiram, and others	14	1
Jones, Abram	2698	8
Jones, Elizabeth	462	2
Jones, J. H	2423	7
Jones, John H	203	1
Jones, Levi	463	2
Judkins, James H. and William T	364	2
Kansas, claims of citizens of	1912	6
Kearney, Louisa	2211	7
Kendall, Maj. William	2421	7
Keneaster, Nimrod D	1911	6
Kentucky, claims of citizens of Jefferson County	1899 3186	6 10
Keys, H. W	2929	9
Kineo and *Chocura*, officers and crews of gunboats	1924	6
Kolbe, Carl F	748	3
Koons, Anthony	2646	8
Kranz, John F	2743	8
La Grange Synodical College	1465	5
Large, William	1190	4
Larrabee & Allen	465	2
Lawrence, George W., administratrix of	751 1346	3 5
Leary, John S. and Mathew N., jr	2610	8
Lee, Allen G	2164	7
Lee, Lucy Ann	2164	7
Leftwich, Gertrude A	2927	9
Lindsay, James	850	3
Linn, Miss Jane	1018	3
Livingston, Ann C	1790	6
Lovelace, Emma C	1433	5
Lovell, Louisa Q	790	3
Lucas, Mrs. W. C	2419	7
Lusk, Solomon	571	2
Lutz, Andrew	2161	7
Lyle, Peter	98	1
Lynch, John A	1606	5
Magill, Lydia A., administratrix	2060	6
Madison Female Institute	1185	4
Malloy, Mrs. Ellen P	789	3
Marsh, Samuel	793	3
Marshall, Levin R	1991	6
Maryland, relief of Frederick, Hagerstown, and Middletown	1917	6
Matthews, William D	889	3
McCauley, James	3171	10
McCool, Wells C	1791	6
McCreary, J. A	2302	7

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McCubbin, James B	3087	10
McElwee, Thomas B	883	3
McKay, Nathaniel	452	2
McLaughlin, Nelson	300	2
McNairy, Hugh	1022	3
Meath, Patrick G	3192	10
Mellen, George H	481	2
Methodist Episcopal Church at Martinsburgh, W. Va	3187	10
Methodist Episcopal Church South, book agents of the	3236	10
Miller, James	1431	5
Millet, Francis	1602	5
Missouri State claim	254	1
Mobile and Girard Railroad Company	1432	5
Moffitt, Alexander	1187	4
Moneys expended for war purposes	1200	4
Montgomery, Pearson C	235	1
	1596	5
Montgomery, Robert H	1199	4
Moody, B. F., & Co	749	3
Moore, Mrs. Elizabeth	1177	4
Moore, Eva	879	3
Moore, Stephen, administrator	2676	8
Morgan, Robert E	2628	8
Morrin, Catharine	2063	6
Morrow, W. B	893	3
Mullin, Mary P	2160	7
Murry, Francis M	102	1
Musgrave, Emeline E	2198	7
Nally, Samuel M	1323	5
Nash, Joseph C	2439	7
Navy, moiety claims of officers and crews of	1476	5
Neet, John S. jr	1197	4
Newman, James C	1171	4
Newman, James M	560	2
New York, to refund duties on arms imported	103	1
Niles, Thomas	884	3
Nisbet, Francis M	1015	4
Noble, Lester	3202	10
Noble, Samuel	1471	5
Noonan, Mary H	2626	8
Norfolk County Ferry Committee	89	1
	2485	8
O'Brien, William D	3085	10
Ockerson, Daniel J	303	2
Owen, Thomas J	1019	3
Parvin, Washington A	328	2
Patter, Henry L	1592	5
Patton, S. K. N	2964	9
Payne, James, & Co	1789	6
Payne, William B	1434	5
Pedersen, Mathias	3011	9
Pemberton, Fannie, formerly Glass	1322	5
Pennsylvania, to reimburse, for militia service	1301	5
for war purposes	3225	10
for damages during late war	1357	5
Perine, Sarah E. E	457	2
Phillips, John C	1815	6
Phillips, O. P	1192	4
Pitcher, William, and others	108	1
Pitzer, T. J	2163	7
Planter, pilot and crew of steamer	2584	8

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Pollard, A. W	1020	3
Ponder, D. K	1309	5
Portland Company, of Portland, Me	450	2
	3036	10
Poullain, Mildred P	1818	6
Presbyterian Church in Marietta, Ga	330	2
Pride, Dennis	459	2
Priest, Matthew S	570	2
Quintard, George W	767	3
Randolph, Fannie B	291	2
Reaney Son & Archbold	293	2
	2789	9
Rettig, Fred	1907	6
Revised Statutes, amend section 4787 of the, relating to artificial limbs	373	2
Rhea, John L	99	1
Rhodes, John, and wife	310	2
Rice, Jamison W., and others	3239	10
Richmond, Charles	1900	6
Roach, John, assignees of	466	2
	3093	10
Roberts, C. C	229	1
Robertson, Mary H. S	312	2
Robinson, Alfred	464	2
Rose, Merritt	1167	4
Rowland, Thomas F	3212	10
Rudd, J. C	1352	5
Ruebling, Adam	2524	8
Rush, Peter S	2299	7
Russell, John H	1475	5
Ryan, M. B., administrator	2707	8
Salinas, Miguel	1600	5
Salmons, Robert D	307	2
Sampson, A. J	2381	7
Sanders, David B	93	1
Saulpaw, George W	1670	6
Saunders, Henry S	1287	5
Sauppe, Valentine	247	1
Schaumburg, James W	1908	6
Schuylkill County, Pa	249	1
Sexton, Harvey J	2061	6
Schaffer, C. M	882	3
Shirley, Mrs. A	1288	5
Slaght, James C	2068	6
Smith, Alfred	1463	5
Smith, Charles B	1196	4
Smith, David D	2379	7
Smith, Sarah G., executrix	322	2
Snowden & Mason	766	3
Society of the United Brethren in Christ	2523	8
Somerville, Hiram	2059	6
Sowers, Frank S	2199	7
Spicer, John	1362	5
Sprague, D. M	994	3
Stark, Dora L	291	2
Slatham, Thompson N	1289	5
St. Cecelina's Academy	3222	10
St. Charles College, of St. Charles, Mo	2524	8
	3092	10
Stewart, Thomas	451	2
St. Joseph's Catholic Church at Martinsburgh, W. Va	1593	5
Stodd, George	992	3

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Stoddart, Alexander	1595	5
Stovall, J. H	202	1
Strickland, Col. Jesse H	2210	7
Suavé, Pierre	292	2
Sullivan, John	3033	10
Swain, E. R	461	2
Swoope, Susannah P	2499	8
Taylor, Edmund D	2191	7
Thompson, Myra	2968	9
Thompson, William	1931	6
Thorne, John D	2930	9
Tilton, William	994	3
Travila, Robert	885	3
Travis, W. C. M	2699	8
Trieber, M	1461	5
Turner, George	878	3
Union National Bank of Louisiana	294	2
Urquhart, C. Augusta, and others	2554	8
Valleau, Sarah J., and others	2416	7
Vance, George T., and Guy P	1163	4
Vandiver, Robert R	2685	8
Vaughn, Mrs. Martha	3232	10
Vaughan, W. H	1344	5
Wadley, F. M	1164	4
Wagner, Harrison	740	3
Walker, Dr. Mary E	1671	6
War of 1812, money expended for military purposes during the	1706	6
Ward, William	2582	8
Ware, Henry	1523	5
Washington, issue of ordnance and ordnance stores to the State of	888	3
Washington Iron Works	752	3
	2788	9
	3125	10
Weaver, Tilghman	267	1
Webster, Capt. I. B	2678	8
Wesson, Randolph	110	1
West Virginia militia	887	3
Wheat, Isaac H	747	3
Wheeler, William H	2848	9
White, Nicholas	2529	8
Wilbur, John K., and others	3240	10
William Jewell College, of Liberty, Mo	90	1
Wilson, William D	791	3
Wilson, William F	1913	6
Wilson, William H., administrator	1355	5
Wolf, Edmund	1594	5
Wood, H. Clay	201	1
Wood, Gerard	2770	8
Wood, Mrs. Sarah H	107	1
	1158	4
Woodbridge, William E	403	2
Wording, Charles, and others	301	2
Worsley, Pardon	2520	8
Wyoming, crew of steamship	1072	4
COMMITTEE ON WAYS AND MEANS—		
Fur-seal interests of the Government	1161	4
Import duties, to reduce the revenue and equalize the duties on imports, etc	1466	5
North German Lloyd Steamship Company	2925	9
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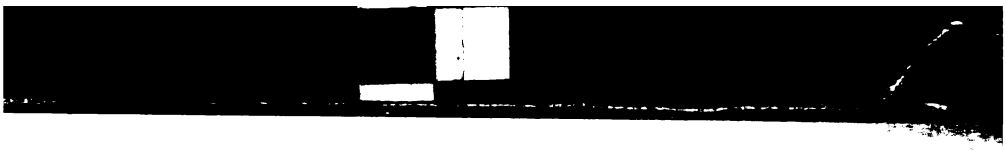

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Elmendorf, William	2465	8
Felch, Amanda M	2280	7
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McCool, John	288	1
McCormick, Hugh S	1398	5
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	1394	5
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Dover, N. H	1528	5
	1645	5
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Fredericksburgh, Va	2928	9
Haverhill, Mass	607	2
Hoboken, N. J	590	2
Holyoke, Mass	2447	8
Jacksonville, Fla	595	2
Jersey City, N. J	2448	8
Lawrence, Mass	2560	8
Lynn, Mass	220	1
Nashua, N. H	2228	7
	2258	7
Newark, N. J	212	1
New London, Conn	411	2
	646	2
Newport News, Va	1001	3
Norfolk, Va	593	2
Paterson, N. J	621	2
Pawtucket, R. I	616	2
	905	3
Petersburgh, Va	1006	3
Reidsville, N. C	600	2
Roanoke, Va	1012	3
St. Albans, Vt	589	2
	710	3
Tampa, Fla	3190	10
Taunton, Mass	614	2
Waterbury, Conn	1151	4
Wilmington, Del	591	2
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Benge, William A	990	3
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Downey, Ann	1517	5
Durand, Margaret	2282	7
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Bissell, Lucy I	1557	5
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Blanton, C. C	1125	4
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Boggs, Zephaniah H	1693	6
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Brandon McBride, Robert A	1094	4
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Brown, M. Cornelia	1096	4
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Colston, Henry	1128	4
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Cullman, Daniel A	518	2
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Dennis, Thomas	520	2
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Dodge, Martha J	3152	10
Douglass, Benjamin F	1544	5
Ebert, William C	1944	6
Elam, Elisha L	524	2
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Evans, John K	1561	5
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Johnson, John A	2765	8
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Utt, Lee H	1567	5
Vosburgh, James H	2408	7
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Webster, Martha F	1558	5
Weese, Anderson	1132	4
Welsh, Mary	1940	6
White, Harriet B	1097	4
Whitney, Charles W	2007	6
Wilson, Mrs. Sallie H	1942	6
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Davis, Albert P	3162	10
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Eaton, Augustus W	1234	5
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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 1.

INVESTIGATION OF THE SERGEANT-AT-ARMS'S OFFICE.

December 12, 1889.—Ordered to be printed.

Mr. Adams, from the Select Committee to Investigate the Accounts of the Sergeant-at Arms of the House of Representatives, submitted the following

REPORT:

The select committee appointed to examine the accounts of John P. Leedom, late Sergeant-at-Arms of the House of Representatives, having had the same under consideration, submit as a partial report the following statement of assets and liabilities of said office on the morning of Thursday, December 5, 1889:

LIABILITIES.

Amount due members and officers per ledger balance			$158,271.04
Amount of overdrafts per ledger			4,153.61
Total liabilities per balance-sheet			154,117.43

ASSETS.

Cash in safe		$60,704.54	
Cash in safe from bank		16,657.34	
Total cash		77,361.88	
Clerks and pension checks	$1,449.60		
Treasury checks	2,010.00		
Leedom's checks	301.00		
Leedom's checks	850.00		
		4,610.60	
Quick assets		81,972.48	
Collections		1,435.99	
			83,408.47
Short			70,708.96

The total liabilities, as shown above, amounting to $154,107.43, is made up partly of balances due members and delegates on account of salaries, and partly of checks or drafts deposited for collection and the amount credited to the members depositing the same on the books of the Sergeant-at-Arms. Checks and drafts thus deposited were generally forwarded to the National Metropolitan Bank of Washington, D. C., for collection. In a few instances, however, the collection drafts remained in the Sergeant-at-Arms's office on December 5, and are now in the vault. The checks and drafts thus remaining in the vault amount to $1,435.99, and appear as assets in the statement above given. Treasury checks procured by the Sergeant-at-Arms at the request of members, and not paid for by the members ordering the same, are carried as cash, and so appear in the statement above submitted. They amount

to $2,010. There also appears among the assets above stated the individual check of J. P. Leedom for $1,000, on which there has been paid the sum of $150, and the balance of $850 is unpaid, which was made by Mr. Leedom and deposited with the cash in the safe in his office for $1,000 drawn by him out of the moneys drawn from the Treasury for the payment of salaries of members. There appeared attached to this check a bond of the Trenton Watch Company for $1,000. The committee are informed that this was attached to the check on Wednesday, December 4. Mr. Leedom has stated that he was ready to pay the balance ($850) and take up the check.

It will be noticed that among the assets above given is an item called "cash in safe from bank," amounting to $16,657.34. This represents the balance remaining in the National Metropolitan Bank to the credit of C. F. Silcott, cashier, on December 5, 1889. The amount has since that date been withdrawn from the bank by the late Sergeant-at-Arms and the cash deposited in a separate package in the vault at the office. At the request of Mr. Leedom a member of the committee was a witness to the transfer. This balance of $16,657.34 due C. E. Silcott, cashier, by the National Metropolitan Bank, does not agree with the balance due from said bank as shown by the books of the Sergeant-at-Arms. The balance shown by these books is $19,902.32, leaving a discrepancy of $3,244.98. This discrepancy may be accounted for in part by the fact, which appears from an examination of the bank-book, that Mr. Silcott sometimes made deposits in and drew checks on said bank without entering the same on the books of the Sergeant-at-Arms.

This account of C. E. Silcott, cashier, with the National Metropolitan Bank has not been as yet sufficiently investigated by your committee. It consisted in part, as already stated, of checks or drafts on other cities deposited by members with the Sergeant-at-Arms and forwarded to the bank for collection. It also consisted partly of notes of members of Congress discounted by the bank. It appears that it has been the custom of the Sergeant-at-Arms to discount the notes of members given to anticipate their salary at the rate of $3.50 per month on a note of $416, which amounts to a little more than 10 per cent. per annum; that the amount of discount received by Mr. Leedom from the 4th of September, 1888, down to the 5th of December, 1889, was $1,859.50, as appears from the books kept by Mr. Silcott. It also appears from the evidence that not all of the discounts were entered upon this book. It is claimed by Mr. Leedom that some of these discounts were made from his personal funds deposited in the safe, but the committee find that in several instances where notes were discounted the money taken from the cash fund was paid over the counter by the paying-teller, and that in general the amount of the note less the discount was placed to the credit of the maker in his account. It appears that in one case, on the 20th of September, a number of these notes, amounting to $8,340, were discounted at the National Metropolitan Bank and the amount credited to the account of C. E. Silcott, cashier.

It also appears from the books of the National Metropolitan Bank that on the 17th day of September last they discounted notes purporting to have been made by members of Congress for the amount of $416 each, and due on the 4th day of December, instant, amounting to the sum of $14,560. Nearly all of the gentlemen whose names were alleged to have been signed upon these notes have appeared before the committee and stated that said notes were forgeries. There is no doubt in the minds of your committee that these notes were forged by Mr. Silcott and discounted at this bank in order to cover defalcations previously

made. When the first defalcation was made your committee have not as yet been able to ascertain.

On the 27th day of November Mr. Silcott appeared at the Treasury Department with certificates in the usual form bearing date of that day, and signed by the late Clerk of the House, covering the salaries of certain members for the month of November, which would become due on the 4th of December instant, to the amount of $36,608, which sum he received in cash from the Treasury. Afterwards, and on the same day, Mr. Silcott paid at the National Metropolitan Bank these forged notes to the amount of $14,560, and took them from the bank with him, and your committee have been unable to find any trace of those notes since. That afterwards, and on the same day, Mr. Silcott deposited with Henry L. Ballentine, the paying teller, the sum of $21,608. On the 29th day of November Mr. Silcott took a number of like certificates, dated and signed in like manner, and nearly all purporting to cover the salary for the month of November, due on the 4th of December instant, amounting to $36,206.70, to the Treasury Department, and received the said sum in cash and Treasury drafts, which sum afterwards on the same day he delivered to Mr. Ballentine, the paying teller.

On the 30th day of November Mr. Silcott took the balance of the certificates then in the office, which nearly all bore the same date and were executed in the same manner and were for the November salary, due on the 4th of December instant, amounting to $60,627.48, and presented them at the Treasury Department and received therefor Treasury drafts to the amount of $252 and the balance, $60,375.48, in currency. That at the time Mr. Silcott left the office with the certificates it was suggested to him that Mr. Roberts, the messenger of the Sergeant-at-Arms, had returned the afternoon previous and would go to the Treasury Department with the certificates; that Mr. Silcott said he would go himself. That at the Treasury Department Mr. Silcott desired payment to be made, as far as possible, in bills of the denomination of $1,000; that these not being obtainable at the time, he was paid in bills of smaller denominations. Mr. Silcott delivered the Treasury drafts for $252 to Mr. Ballentine, the paying teller. There is some reason to believe that Mr. Silcott returned two packages, each containing one hundred one-dollar bills and on the outside one $100 bill, to the safe in the office of the Sergeant-at-Arms. There is no evidence that any portion of the balance of said sum was ever returned to the office of the Sergeant-at-Arms by Mr. Silcott.

It also appears that Mr. Silcott left the city of Washington on the evening of the 30th of November on the 11.20 train for New York, and that he carried with him from the hotel to the station a valise. Mr. Silcott informed Mr. Leedom on Saturday of his proposed trip to New York, and stated that he was going to collect a debt due him from a gentleman there amounting to about $10,000; that he proposed to return Sunday evening or Monday. Mr. Silcott did not return.

It appears that the books were kept by J. D. Selzer, the book-keeper, that they were balanced during the sessions of the House generally every day, and during the recess at reasonably frequent intervals. These balances would show from time to time the exact amount of cash that ought to be on hand. The cash was kept in two distinct compartments of the safe, one under the control of the paying teller and the other under the control of Mr. Silcott. The paying teller kept an account of the receipts and disbursements of cash under his control, and counted his cash from day to day. There is no deficiency in the cash under his control. These balances, after deducting the amount of cash

on hand from day to day under the control of the teller, would also show the exact amount that should be under the control of Mr. Silcott and in his compartment of the safe.

It appears that that portion of the cash has never been counted during the six years of Mr. Leedom's incumbency by any other person than Mr. Silcott, and it does not appear that Mr. Silcott ever counted the cash or that Mr. Leedom ever required or asked for a count of the cash during the whole time until the evening of the 5th instant, when the deficiency, as stated in the foregoing report, appeared. Mr. Leedom seems to have exercised no careful supervision of the financial affairs of the office. Your committee can not too severely condemn his neglect to exercise proper supervision of the interests committed to his care by the House.

Your committee have no criticism to make upon the manner in which Henry L. Ballentine, the paying teller, and J. D. Selzer, the book-keeper, have discharged their duties during the entire period of their service. They appear to have done their whole duty.

The committee have restricted themselves to a presentation of the facts so far as they have as yet appeared, believing that they are confined thereto by the terms of the resolution under which they were appointed.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 2.

PUBLIC PRINTING AND ELEVENTH CENSUS.

DECEMBER 19, 1889.—Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

Mr. HENDERSON, of Iowa, from the Committee on Appropriations, submitted the following

REPORT:

[To accompany bill H. R. 5.]

The Committee on Appropriations, in presenting for the consideration of the House the accompanying bill appropriating $150,000 to supply a deficiency in the appropriation for public printing and binding for the fiscal year 1890, and $250,000 for engraving, printing, and binding for the preliminary work of the Eleventh Census, submit herewith for the information of the House the following letters and papers considered by the committee:

PUBLIC PRINTING.

OFFICE OF THE PUBLIC PRINTER,
Washington, December 12, 1889.

SIR: Referring to the letter from the Secretary of the Treasury, transmitting an estimate from me of a deficiency in the appropriation for public printing and binding for the present fiscal year, which was laid before the House yesterday, and referred to your committee, I have the honor to request that the same may receive immediate consideration, as the sum asked for is required to cover the expenses of this office for the month of December, 1889.

The following statement shows the condition of the allotment of the appropriation named for the first two quarters of the current fiscal year:

Allotment for first two quarters		$1,006,500.00
Allotment received for printing, and from sales of waste paper, etc., July 1 to November 30, 1889		73,118.28
Total resources		1,079,618.28
Expenditures (exclusive of leaves of absence), July 1 to November 30, 1889	$863,404.39	
Outstanding liabilities, November 30, 1889 (estimated)	151,265.25	
Total liabilities		1,014,669.64
Unexpended balance, December 1, 1889		64,948.64

The above statement shows an average expenditure of $203,000 per month for the first five months of the present fiscal year, during which period Congress was not in session, and, consequently, there were no proceedings and debates, bills, resolutions, etc., printed. These items increase the expenses of the office about $25,000 per month.

It is, therefore, estimated that the sum of $228,000 will be required to meet the expenses of the present month. Deduct from this the unexpended balance ($64,948.64) of the allotment of the appropriation for the first two quarters of the fiscal year, and we have a deficiency of $163,000, which may be reduced to $150,000 by deducting the estimated earnings from printing, sales of waste paper, etc., during December, viz, $13,000.

Very respectfully,

F. W. PALMER,
Public Printer.

Hon. J. G. CANNON,
Chairman of the Committee on Appropriations, House of Representatives.

OFFICE OF THE PUBLIC PRINTER,
Washington, December 13, 1889.

SIR: At the request of the clerk of your committee, I have the honor to transmit herewith a statement showing the regular and deficiency appropriations for public printing and binding for the fiscal years 1886 to 1890, both inclusive, as well as the sums credited thereto from sales of extra documents, waste paper, etc.

In this connection it may not be improper to state that the work printed and delivered to the several executive departments during the first five months of the present fiscal year exceeds that for the first five months of the last fiscal year $10,000.

Very respectfully,

F. W. PALMER,
Public Printer.

Hon. J. G. CANNON,
Chairman Committee on Appropriations, House of Representatives, City.

Statement showing the regular and deficiency appropriations for public printing and binding for the fiscal years 1886 *to* 1890, *both inclusive, as well as the sums credited thereto from sales of extra documents, waste paper, etc.*

Public printing and binding, 1885–'86:	
Regular appropriation	$2,250,000.00
Deficiency appropriation, May 28, 1886	231,500.00
Receipts from sales of waste paper, etc	128,314.02
Total	2,609,814.02
First half of fiscal year 1885–'86:	
Regular appropriation	1,125,000.00
Receipts from sales of waste paper, etc	32,544.91
Total	1,157,544.91
Public printing and binding, 1886–'87:	
Regular appropriation	2,000,000.00
Appropriation for leaves of absence	95,000.00
Deficiency appropriation, December 22, 1886	85,000.00
Receipts from sales of waste paper, etc	102,163.78
Total	2,282,163.78
First half of fiscal year 1886–'87:	
Regular appropriation	1,000,000.00
Appropriation for leaves of absence	47,500.00
Deficiency appropriation, December 22, 1886	85,000.00
Receipts from sales of waste paper, etc	43,968.66
Total	1,176,468.66
Public printing and binding, 1887–'88:	
Regular appropriation	2,027,000.00
Appropriation for leaves of absence	95,000.00
Deficiency appropriation, March 30, 1888	108,000.00
Receipts from sales of waste paper, etc	163,956.02
Total	2,393,956.02
First half of fiscal year 1887–'88:	
Regular appropriation	1,013,000.00
Appropriation for leaves of absence	47,500.00
Receipts from sales of waste paper, etc	27,272.99
Total	1,087,772.99
Public printing and binding, 1888–'89:	
Regular appropriation	2,067,000.00
Appropriation for regular leaves of absence	190,000.00
Appropriation for pro-rata leaves of absence	15,000.00
Deficiency appropriations:	
December 22, 1888	63,000.00
March 2, 1889	130,530.18
Receipts from sales of waste paper, etc	148,728.55
Total	2,614,258.73
First half of fiscal year 1888–'89:	
Regular appropriation	1,033,500.00
propriation for regular leaves of absence	95,000.00
Appropriation for pro-rata leaves of absence	7,500.00
Deficiency appropriation December 22, 1888	63,000.00
Receipts from sales of waste paper	37,977.94
Total	1,236,977.94

Public printing and binding, 1889-'90:	
Regular appropriation	2,013,000.00
Appropriation for regular leaves of absence	100,000.00
Appropriation for pro-rata leaves of absence	15,000.00
Receipts from sales of waste paper, etc., to November 30	73,118.28
Total	2,291,118.28
First half of fiscal year 1889-'90:	
Regular appropriation	1,006,500.00
Appropriation for regular leaves of absence	95,000.00
Appropriation for pro-rata leaves of absence	7,500.00
Receipts from sales of waste paper, etc., to November 30	73,118.28
Total	1,182,118.28

NOTE.—During this year (the first time since the passage of the leave-of-absence law) the appropriations for leaves of absence have not been used for other purposes. The sum expended for leaves of absence from July 1 to November 30 was $89,527.42.

RECAPITULATION.

Fiscal year.	Amount available for the whole fiscal year.	Amount available for first half of fiscal year.
1885-'86	$2,609,814.02	$1,157,544.91
1886-'87	2,282,163.78	1,176,468.66
1887-'88	2,393,956.02	1,088,272.99
1888-'89	2,614,258.73	1,236,977.94
1889-'90	2,291,118.28	1,182,118.28

Extraordinary expenses paid out of the appropriation for public printing and binding, 1889-'90.

Printing twelve contested-election cases	$19,878.26
Repairs to building	4,231.10
Making connections with new engine	1,591.80
Iron stairway to new stereotype foundry	590.35
Painting outside walls of new stereotype foundry	292.00
Ventilator on roof of new stereotype foundry	448.56
Repairs to electric-light plant	2,050.00
Repairing engine	194.14
Total	29,276.21

NOTE.—The printing of the contested-election cases for the Forty-ninth Congress cost $4,894.51.

Original estimates for public printing and binding.

Fiscal year—	
1886	$2,676,107.62
1887	2,434,653.68
1888	2,427,047.41
1889	2,489,621.33
1890	2,779,751.54

ELEVENTH CENSUS.

DEPARTMENT OF THE INTERIOR, CENSUS OFFICE,
Washington, December 10, 1889.

SIR: I have the honor to respectfully call your attention to the following paragraph in my report to the honorable Secretary of the Interior of the operations of the Census Bureau in 1889:

"Section 20 of the act provides for the expenses of the Eleventh Census, and for the preliminary printing, engraving, and binding. Under the ruling of the Treasury Department these expenses must be paid out of the general appropriation for printing and binding of the Interior Department. The cost of the preliminary engraving and binding of the Tenth Census was $250,000, and, as the funds thus required for immediate use can not be taken out of the amount fixed for taking the Eleventh Census, additional legislation, appropriating a sum not less than $350,000 for the purpose, is necessary to relieve the immediate wants of this office, and to furnish the necessary money to defray the cost of the preliminary printing, engraving, and binding of the Eleventh Census.

"It is the intention of the Superintendent to publish census bulletins, containing results of the work, as rapidly as possible. The first of these bulletins has already been issued, and the second, relating to a preliminary investigation of the recorded

indebtedness of private corporations and individuals throughout the United States, will soon be out. The expense of this important work, together with the other printing, engraving, and binding necessary in the prosecution of the work, can not, under the aforesaid ruling, be defrayed from the general appropriation; hence the urgent necessity of additional legislation."

The need for immediate action in this matter is pressing. No provision was made by the Fiftieth Congress for printing, binding, and engraving in connection with taking the Eleventh Census, and the sum of $6,400,000 was fixed and limited as the maximum cost of the census, "exclusive of printing, engraving, and binding."

Considerable printing has already been done, and the amount required will increase enormously within the next few months. During that time all the schedules, numbering more than 20,000,000, must be printed and gotten ready for the enumerators. Delay in this will jeopardize the whole census and make it impossible to have the official count ready early next fall. The amount asked for is, when the increase of population is taken into consideration, about the same as the amount appropriated for this purpose in the Tenth Census. As the Fifth Auditor of the Treasury refuses to pass vouchers for this purpose it is in fact a deficiency, and the chairman of the Census Committee of the Senate, Hon. Eugene Hale, is of the opinion that provision should be made for this in the deficiency bill, and the sum made available at once. It should be distinct from and in addition to the sum named as the maximum cost of the census, as clearly intended by the act of March 1, 1889, providing for taking the eleventh and subsequent censuses.

Every effort will be made on my part to take the Eleventh Census as economically as possible, but it should be borne in mind that such a census as the people of the United States expect the Centennial Census to be can not be taken without large expenditures. The army of people—probably reaching 45,000 and spreading all over this vast domain—when once put in motion, *must be continued until the work is finished.* Delays in the appropriation, embarrassment occasioned through the lack of funds for printing, or temporary suspension of work increase the cost by geometrical progression. It is impossible to estimate with any degree of exactitude the cost of a census so far reaching and covering so many special inquiries, all of which are demanded by the law, until after the count of the population, and then it is too late to refuse to pay for the work conscientiously done.

I sincerely trust this matter will receive the early consideration of the Committee on Appropriations that its importance and urgency demand.

I have the honor to be, very respectfully,

ROBERT P. PORTER,
Superintendent of Census.

Hon. JOSEPH G. CANNON,
Chairman Committee on Appropriations, House of Representatives.

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE,
Washington, October 17, 1889.

SIR: Inclosed herewith find three vouchers (Nos. 54, 73, and 114), amounting to $5,919.28, included in the account of J. C. Stoddard, disbursing clerk, for "expenses of the Eleventh Census, quarter ending September 30 ultimo."

The articles specified in the bills were obtained from the Interior Department and a re-imbursement for the full amount has been made by a deposit into the United States Treasury, to be credited to the appropriation "Printing and binding, Interior Department."

In the opinion of this office the above amount is not chargeable to the appropriation for "expenses of the Eleventh Census."

Section 20 of the act providing for these expenses limits the amount to $6,400,000, "*exclusive of printing, engraving, and binding,*" and it appropriates $1,000,000 of said amount to be immediately available.

The vouchers returned herewith are on their face chargeable to the allotment to the Department of the Interior for "printing and binding," and there seems to be no authority for re-imbursing the Department out of the appropriation for "expenses of the Eleventh Census."

Yours, respectfully,

L. W. HABERCOM,
Auditor.

Hon. R. P. PORTER,
Superintendent of the Census.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 3.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

December 21, 1889.—Ordered to be printed and laid over.

Mr. McComas, from the Committee on Appropriations, submitted the following

REPORT:

[To accompany bill H. R. 3711.]

The Committee on Appropriations, in presenting the bill making appropriations for the support of the government of the District of Columbia for the fiscal year ending June 30, 1891, submit the following in explanation thereof:

The estimates upon which the bill is based will be found on pages 208 to 217 of the Book of Estimates and in the annual report of the Commissioners of the District, and, exclusive of the water department, aggregate $5,514,222.09, one-half of which amount, or so much thereof as Congress may appropriate, is required to be drawn from the revenues of the General Government, and the remaining one-half to be levied upon the taxable property and privileges in the District of Columbia, other than the property of the United States and the District of Columbia, pursuant to section 3 of the act approved June 11, 1878, entitled "An act providing a permanent form of government for the District of Columbia." (Statutes at Large, vol. 20, p. 102.)

The total amount recommended to be appropriated for the general expenses of the District of Columbia for the fiscal year 1891, in the bill submitted herewith, is, exclusive of the water department, $5,098,659.97, of which sum the General Government is required to pay $2,549,329.98, that being the one-half of the whole sum. The whole amount recommended is $415,562.12 less than the estimates.

The amount appropriated for the general expenses of the District of Columbia for the current fiscal year is $5,447,045.27, being $348,385.30 more than is recommended in the accompanying bill for 1891.

The amount recommended for the water department and payable from the water revenues, and which is not included in the sums above, is $233,274.18. The amount appropriated for the same purposes for the current fiscal year is $235,364.64.

The revenues of the District of Columbia for the fiscal year 1891 are estimated at $2,473,461.73, as is shown by a statement furnished the committee by the District officials, and which will be found in the appendix to this report. In addition to this sum there is in the Treasury a surplus of District revenues amounting to $226,398.31 over and above obligations fixed by appropriations for the current fiscal year, making in all $2,699,860.04, or $150,530.06 more than the one-half of the aggregate amount of the accompanying bill, exclusive of the appropriations for the water department.

CONTINGENT EXPENSES.

Following the practice adopted several years ago with reference to the contingent expenses of the several Executive Departments, it is proposed in the accompanying bill to appropriate in one sum for the contingent expenses of all the offices of the District government, including the sinking fund office, health department, and police court. The sum recommended is $250 in excess of the aggregate amount which was appropriated for the several offices for the current fiscal year, being intended to give $200 additional for the markets and $50 for the board of examiners of steam engineers.

It is believed that this method will prove to be, as it was in the case of the Executive Departments, a reform in the direction of economy, will fix the responsibility for expenditure solely upon the Commissioners, and will also result in preventing the multitude of small deficiencies heretofore annually reported to Congress in the contingent funds of almost every office in the District government. A limitation is coupled with the sum recommended for appropriation requiring the Commissioners to so apportion it as to prevent a deficiency.

LIMITATIONS.

Limitations with reference to appropriations made by the bill, and not heretofore imposed, are recommended as follows:

On page 4, under collector's office, instead of the provision heretofore attached thereto, with reference to the cashier, the following is proposed:

And such cashier shall hereafter, in the necessary absence or inability of the collector, from any cause, perform his duties without any additional compensation; and the collector may require the said cashier to give bond for the faithful performance of such duties during the absence or inability of the collector; but the collector shall in every respect be responsible to the United States, the District of Columbia, and to individuals, as the case may be, for all moneys collected.

On page 5, under the auditor's office, with reference to the chief clerk therein, the following is proposed:

Who shall hereafter, in the necessary absence or inability of the auditor from any cause, perform his duties, without additional compensation, and the auditor may require the said chief clerk to give bonds for the faithful performance of such duties during the absence or inability of the auditor; but the auditor shall in every respect be responsible to the United States, the District of Columbia, and, as heretofore, to individuals.

On pages 8 to 10, the limitation applied to the appropriation for "Permit work" in the District appropriation act for 1890 is repeated, with only such verbal changes as will render it permanent in its nature and avoid its repetition in future acts.

On page 15, attached to the appropriation for sprinkling, sweeping, and cleaning streets, the following is proposed:

That no expenditure hereunder shall be made at a price higher than thirty cents per one thousand square yards.

On page 16, under the appropriation for electric lighting, the following is proposed:

And no overhead wires for public or private electric lighting shall be permitted on or over any of the streets or avenues of the cities of Washington or Georgetown after September thirtieth, eighteen hundred and ninety.

On page 22 the following provision, contained in the District appro-

priation act for 1890, is repeated, with the word "hereafter" inserted in the first line thereof, so as to avoid its repetition in future acts:

That hereafter the Commissioners shall have all the powers conferred on the Secretary of the Treasury and other officers of the United States by the act of August first, eighteen hundred and eighty-eight, entitled "An act to authorize condemnation of land for sites of public buildings, and for other purposes," for the condemnation of land for sites for school buildings, engine-houses, and for police stations; application for such proceedings shall be filed in the supreme court of said District, by the attorney thereof, under such orders as said court may prescribe in such cases.

On page 27, following the appropriation for telegraph and telephone service, the following is proposed:

That the Commissioners of the District of Columbia may hereafter, under such reasonable conditions as they may prescribe, authorize any telegraph, telephone, or electric light company to lay wires under any street, alley, highway, footway, or sidewalk in the District, whenever in their judgment the public interest may require the exercise of such authority, such privileges as may be granted hereunder to be revocable at the will of Congress without compensation, and this authority to continue only until the termination of the Fifty-first Congress, and the Commissioners of the District of Columbia are hereby authorized and directed to impose and collect a license fee of twenty-five dollars per annum against any corporation, person, or persons, for each and every telegraph or telephone pole maintained by it, him, or them in any street or avenue in the cities of Washington and Georgetown after July first, eighteen hundred and ninety-one.

On page 30 the following provision, which was contained in the last District appropriation act, is repeated, modified so as to require the Commissioners to submit the estimates mentioned in the regular annual Book of Estimates:

That hereafter the several institutions included under the head of asylums, reformatories, industrial schools, and charities named in this act and in former and succeeding appropriation acts for the support of the District of Columbia shall report to the Commissioners of the District, on or before the first day of October of each year, a full and detailed account of receipts and expenditures, and all their operations, and said Commissioners shall transmit the same to Congress at the beginning of each regular session, with such suggestions and recommendations as they may deem pertinent, and they shall also submit in the regular Book of Estimates estimates for maintaining the same.

On page 33, referring to the Reform School of the District, the following is inserted:

Provided that hereafter the proceeds of farm and shops shall be covered back into the Treasury, to be divided equally between the District of Columbia and the United States.

On page 37, under the water department, the following is inserted:

That one-half the cost of laying the new water main from K street northwest along Fourteenth street to B street southwest, including necessary connections, as provided in the act approved July eighteenth, eighteen hundred and eighty-eight, be repaid from the revenues of the water department for the fiscal year eighteen hundred and ninety, and the other half from the revenues of the fiscal year eighteen hundred and ninety-one.

The following table explains in detail the bill as compared with the estimates for 1891 and the appropriations for 1890:

Comparative statement showing the estimates for 1891, the appropriations for 1890, and the amounts recommended in the accompanying bill for 1891.

Object.	Estimates for 1891.		Appropriations for 1890.		Recommended for 1891.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
Salaries:						
Executive office	$43,977.00	34	$42,577.00	33	$43,577.00	34
Contingent expenses	25,280.00	.....	22,830.00	.....	23,080.00	.....
Rent of District offices	4,000.00	.....	3,600.00	.....	3,600.00	.....
General advertising	3,000.00	.....	3,000.00	.....	3,000.00	.....
Reproduction of dockets by register of wills	450.00	.....	1,000.00	.....	450.00	.....
Payments to Dorsey Clagett	176.12	.....	.....	.....	.....	.....
Assessor's office	17,300.00	13	17,300.00	13	17,300.00	13
Collector's office	19,200.00	12	17,200.00	11	17,200.00	11
Collecting overdue personal taxes	1,500.00	.....	1,500.00	.....	1,500.00	.....
Auditor's office	16,200.00	10	16,200.00	10	16,200.00	10
Attorney's office	11,200.00	5	11,200.00	5	11,200.00	5
Sinking-fund office	2,400.00	2	2,400.00	2	2,400.00	2
Coroner's office	3,100.00	1	2,800.00	1	2,800.00	1
Market masters	3,600.00	3	3,600.00	3	3,600.00	3
Engineer's office	44,950.00	41	40,150.00	37	41,350.00	38
Sanitary commission	.....	.....	15,000.00	.....	.....	.....
Board of examiners, steam engineers	900.00	3	.....	.....	900.00	3
Total salaries	197,233.12	124	200,357.00	115	188,157.00	120
Permit work	200,000.00	.....	125,000.00	.....	130,000.00	.....
Improvements and repairs:						
Work on sundry streets and avenues	650,000.00	.....	772,000.00	.....	600,000.00	.....
Grading streets, alleys, and roads	25,000.00	.....	15,000.00	.....	15,000.00	.....
Repairs to pavements	100,000.00	.....	215,000.00	.....	100,000.00	.....
Surveys of the District	10,000.00	.....	10,000.00	.....	7,000.00	.....
Surveys on account of subdivision of lands	5,000.00	.....	5,000.00	.....	5,000.00	.....
Total improvements and repairs	790,000.00	.....	1,017,000.00	.....	727,000.00	.....
Sewers:						
Cleaning and repairing sewers and basins	42,000.00	.....	35,000.00	.....	42,000.00	.....
Replacing obstructed sewers	26,000.00	.....	15,000.00	.....	26,000.00	.....
Main and pipe sewers	125,000.00	.....	90,000.00	.....	140,000.00	.....
Suburban sewers	75,000.00	.....	50,000.00	.....	75,000.00	.....
Gauging sewers and rain-fall	3,000.00	.....	.....	.....	2,000.00	.....
Total for sewers	271,000.00	.....	190,000.00	.....	285,000.00	.....
Streets:						
Repairs of streets, avenues, and alleys	60,000.00	.....	40,000.00	.....	40,000.00	.....
Repairs of county roads	75,000.00	.....	50,000.00	.....	50,000.00	.....
Construction of county roads	204,450.00	.....	135,525.00	.....	138,350.00	.....
Condemnation of streets, roads, and alleys	5,000.00	.....	5,000.00	.....	5,000.00	.....
Sprinkling, sweeping, and cleaning	100,000.00	.....	85,000.00	.....	90,000.00	.....
Parking Commission	18,000.00	.....	18,000.00	.....	18,000.00	.....
Lighting	131,600.00	.....	115,000.00	.....	125,000.00	.....
Electric lighting	45,000.00	.....	40,000.00	.....	45,000.00	.....
Harbor and river front	4,000.00	.....	2,500.00	.....	2,500.00	.....
Public scales	250.00	.....	250.00	.....	250.00	.....
Public pumps	5,000.00	.....	4,000.00	.....	5,000.00	.....
Total for streets	648,300.00	.....	495,275.00	.....	519,100.00	.....
Bridges	25,000.00	.....	13,400.00	.....	25,000.00	.....
Washington Aqueduct	20,000.00	.....	20,000.00	.....	20,000.00	.....

Comparative statement showing the estimates for 1891, *etc.*—Continued.

Object.	Estimates for 1891.		Appropriations for 1890.		Recommended for 1891.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
Public schools:						
For officers	$7,450.00	6	$7,450.00	6	$7,450.00	6
For teachers	544,575.00	795	506,600.00	745	540,600.00	795
For night schools	6,600.00	.....	5,500.00	.....	6,600.00	.....
For janitors and care of buildings	46,476.00	71	41,811.00	64	44,626.00	70
Rent of school buildings	10,000.00	.....	10,000.00	.....	10,000.00	.....
Repairs and improvements to buildings	25,000.00	.....	20,000.00	.....	22,000.00	.....
Tools and machinery for industrial instruction	10,000.00	.....	10,000.00	.....	10,000.00	.....
Fuel	30,000.00	.....	24,000.00	.....	27,000.00	.....
Furniture for new school buildings	8,000.00	.....	7,000.00	.....	8,000.00	.....
Contingent expenses	25,000.00	.....	25,000.00	.....	25,000.00	.....
For sites for and new buildings	200,925.00	.....	307,985.30	.....	218,925.00	.....
Total for schools	914,026.00	872	965,346.30	815	920,201.00	871
Metropolitan police:						
For salaries	484,560.00	489	418,500.00	423	420,600.00	428
Miscellaneous expenses	33,400.00	.....	30,140.00	.....	31,400.00	.....
Buildings and grounds	48,875.00	.....	19,000.00	.....	10,375.00	.....
Total police	566,835.00	489	467,640.00	423	462,375.00	428
Fire department:						
For salaries	109,420.00	130	100,140.00	119	109,220.00	130
Miscellaneous expenses	32,100.00	.....	36,250.00	.....	32,100.00	.....
Buildings	22,000.00	.....	.....	.....	22,000.00	.....
Total fire department	163,520.00	130	136,390.00	119	163,320.00	130
Telegraph and telephone service:						
For salaries	10,800.00	13	9,800.00	12	10,800.00	13
General supplies	10,000.00	.....	7,000.00	.....	7,000.00	.....
Total telegraph, etc., service	20,800.00	13	16,800.00	12	17,800.00	13
Health department:						
For salaries	24,540.00	18	24,540.00	18	24,540.00	18
Removal of garbage	25,000.00	.....	20,000.00	.....	22,000.00	.....
Rent	1,120.00	.....	1,120.00	.....	1,120.00	.....
Total health department	50,660.00	18	45,660.00	18	47,660.00	18
Courts:						
Police court	15,818.00	7	14,018.00	7	15,118.00	7
Defending suits in claims	2,500.00	.....	2,500.00	.....	2,500.00	.....
Writs of lunacy	2,000.00	.....	2,000.00	.....	2,000.00	.....
Total for courts	20,318.00	7	18,518.00	7	19,618.00	7
For interest and sinking fund	1,213,947.97	.....	1,213,947.97	.....	1,213,947.97	.....
Emergency fund	5,000.00	.....	5,000.00	.....	5,000.00	.....
Reformatories and prisons:						
Transportation of prisoners	4,000.00	.....	4,000.00	.....	4,000.00	.....
Washington Asylum, salaries	15,300.00	37	13,415.00	35	13,715.00	35
Miscellaneous expenses	84,950.00	.....	40,000.00	.....	70,850.00	.....
Reform School, salaries	14,032.00	29	12,596.00	25	12,896.00	26
Miscellaneous expenses	40,200.00	.....	27,300.00	.....	26,300.00	.....
Industrial Home School, salaries and miscellaneous	15,000.00	.....	17,200.00	.....	14,000.00	.....
Total reformatories and prisons	173,482.00	66	114,511.00	60	141,761.00	61
For support of the insane	87,500.00	.....	85,000.00	.....	87,500.00	.....
For charities:						
For relief of the poor	16,000.00	.....	16,000.00	.....	16,000.00	.....
For temporary support of indigent persons	5,500.00	.....	5,000.00	.....	5,000.00	.....
For Columbia Hospital and Lying-in Asylum	20,000.00	.....	20,000.00	.....	20,000.00	.....
For Women's Christian Association	4,500.00	.....	4,000.00	.....	4,000.00	.....

Comparative statement showing the estimates for 1891, *etc.*—Continued.

Object.	Estimates for 1891.		Appropriations for 1890.		Recommended for 1891.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
For charities—Continued.						
For National Association for Destitute Colored Women and Children	$12,000.00	.....	$10,700.00	.....	$10,000.00	.....
For Children's Hospital	5,000.00	.....	5,000.00	.....	7,000.00	.....
For St. Ann's Infant Asylum	6,000.00	.....	6,000.00	.....	6,000.00	.....
For St. Rose Industrial School	1,500.00	....	5,000.00	.....	.....	.....
For German Orphan Asylum	5,000.00	.....	10,000.00	.....	5,000.00	.....
For Church Orphanage Association	1,500.00	.....	1,500.00	.....	1,500.00	.....
For Washington Hospital for Foundlings	7,000.00	.....	6,000.00	.....	7,000.00	.....
For Association for Works of Mercy	2,500.00	.....	5,500.00	.....	2,500.00	.....
For National Homeopathic Hospital	6,000.00	.....	5,000.00	.....	5,000.00	.....
For National Temperance Home	3,000.00	.....	2,500.00	.....	2,500.00	.....
For House of Good Shepherd	1,000.00	.....	15,000.00	....	.....	.....
For Central Dispensary	3,000.00	.....	.....	.....	.....	.....
For the Little Sisters of the Poor	1,000.00	.....	.....	.....	.....	.....
For the Night Lodging-House	600.00	.....	.....	.....	.....	.....
For the Columbia Institution for Deaf and Dumb	10,500.00	.....	.....	.....	10,500.00	.....
Total for charities	111,600.00	.....	117,200.00	.....	102,000.00	.....
For Zoological Park	.....	.....	200,000.00	.....	.....	.....
For militia for District of Columbia	35,000.00	....	.....	.....	23,220.00	.....
Grand total exclusive of water department	5,514,222.09	1,719	5,447,045.27	1,569	5,098,659.97	1,648
Amount payable from United States Treasury	2,757,111.04	....	2,723,522.63	.....	2,549,329.98	.....
Water department:						
For salaries and contingent	19,039.00	15	18,339.00	14	17,339.00	14
For engineers, firemen, etc	86,000.00	.....	86,000.00	.....	86,000.00	.....
For interest and sinking fund, water-stock bonds	44,610.00	.....	44,610.00	.....	44,610.00	.....
For interest on account of water supply	31,809.44	....	33,399.91	.....	31,809.44	.....
For sinking fund on account of water supply	53,015.74	.....	53,015.73	.....	53,015.74	.....
Total water department	234,474.18	15	235,364.64	14	233,274.18	14

APPENDIX.

REVENUES DISTRICT OF COLUMBIA.

WASHINGTON, *December* 18, 1889.

GENTLEMEN: In compliance with the request of Hon. L. E. McComas, chairman of subcommittee on appropriations, in charge of the District appropriation bill, I have the honor to forward a supplemental statement showing estimated receipts of the District of Columbia for the fiscal year ending June 30, 1891; same being based, so far as anticipated revenue from real and personal property is concerned, on the proven addition of the twelve real-estate and four personal-tax ledgers of my office.

In the preparation of the estimates submitted by me in September last, which were forwarded to the Secretary of the Treasury and which appear on page 314, "estimates of appropriations for 1889–'90," the figures for same, relative to real and personal estimated receipts, were obtained by the addition of the numerical sheets and were not proved.

By comparing the two statements together it will be seen that there is a difference of $38,710.82 in the total estimated receipts, which is explained as follows: The estimates forwarded to the Secretary were based on a tax levy of $145,744,455, as shown by the numerical sheets, as against an actual tax levy for which the collector of the District of Columbia has receipted for and been charged with on the Treasury books, amounting to $148,649,586.

In the supplemental estimates herewith submitted I have made no change in any of the figures which were submitted by me in my first estimates, except as made necessary in the difference above explained.

I submit printed statements of the assessed value of real and personal estate, the former from 1871 to 1890 and the latter from 1877 to 1890.

I also inclose two statements prepared by the auditor; one being a comparison of the estimates of 1890 and 1891, and the other showing the number of permits issued by the inspector of buildings erected from 1879 to 1889, inclusive.

Respectfully,

ROGER WILLIAMS,
Assessor District of Columbia.

The COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

ASSESSOR'S OFFICE, *Washington, D. C., December* 17, 1889.

Estimated receipts of the District government from all sources applicable to the general expenses of the District for the fiscal year ending June 30, 1891, *as revised upon completion of the general assessment.*

ESTIMATED VALUE OF REAL ESTATE.

Washington	$119,613,603
Georgetown	5,395,021
County, non-agricultural	8,533,303
	133,541,927
County, agricultural	4,084,492
	137,626,419
Personal	11,023,167
Total	148,649,586

Estimated receipts of the District government from all sources, etc.—Continued.

ESTIMATED RECEIPTS.

Tax on real estate	$123,541,927 at $1.50	$2,003,128.91	
Tax on real estate	4,084,492 at 1.00	40,844.92	
		2,043,973.83 at 90 per cent	$1,839,576.44
Tax on personal, $11,022,167 at $1.50		165,347.51 at 90 per cent	148,812.75
Arrears of general taxes prior to 1889		384,491.90 at 25 per cent	96,122.97
Arrears of general taxes of 1889		180,165.54 at 50 per cent	90,082.77
Arrears of personal taxes prior to 1889		257,326.04 at 5 per cent	12,866.30
Arrears of personal taxes of 1889		15,000.00 at 70 per cent	10,500.00
Penalties and interest			40,000.00
Licenses			150,000.00
Markets			10,000.00
Fines from courts			25,000.00
Building permits			8,000.00
Rent of wharves and District property			2,500.00
Certificate of arrears of taxes			2,500.00
Washington Market fund			7,500.00
Dog tags			14,000.00
Pound fees			500.00
Hay scales			2,500.00
Miscellaneous, sale of old material, etc			3,000.00
Total estimated receipts			2,472,461.73

Comparative statement of certain items of revenue of the District of Columbia.

	Actual receipts 1884.	Actual receipts 1885.	Actual receipts 1886.	Actual receipts 1887.	Actual receipts 1888.	Actual receipts 1889.	Estimated receipts 1890.	Estimated receipts 1891.
Licenses	134,181.61	144,652.57	156,143.27	164,982.13	138,981.55	157,579.94	140,000	150,000
Markets	10,181.00	9,305.22	10,185.48	11,553.76	10,206.39	10,664.34	10,500	10,000
Fines from courts	34,705.01	41,005.79	40,085.68	36,152.83	39,333.23	35,562.94	40,000	35,000
Building permits	5,712.50	6,092.00	8,571.00	9,783.00	7,846.55	8,499.63	8,000	8,000
Rent of wharves, etc	3,431.85	7,821.45	4,288.62	4,746.85	4,187.06	2,515.75	4,000	2,500
Certificates for taxes	1,749.50	1,822.50	2,802.00	3,402.50	2,308.50	2,534.00	2,500	2,500
Washington Market fund	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500	7,500
Dog tags	8,094.37	12,786.07	14,124.09	11,923.53	11,540.41	6,975.10	11,000	14,000
Pound fees	689.30	454.55	419.75	367.00	391.75	503.00	300	500
Hay scales	875.91	1,049.51	829.95	1,840.54	3,019.10	2,645.00	3,000	2,500
Permit fees	2,134.95	2,676.00	3,360.00	4,033.00	3,551.00	4,081.00	4,000	4,000
Miscellaneous	6,888.86	4,268.91	7,647.94	10,787.13	11,629.06	10,975.44	7,000	3,000

Number of permits and value of buildings erected from 1879 *to* 1889.

June 30—	Number of permits.	Fees.	Value.	June 30—	Number of permits.	Fees.	Value.
1879	1,619	$3,620.00	$1,735,715	1885	2,832	$6,092.00	$4,007,234
1880	1,663	3,577.50	2,129,978	1886	3,754	8,571.00	5,283,272
1881	1,499	3,237.00	1,951,970	1887	4,099	9,783.00	7,109,624
1882	1,519	3,531.00	2,468,986	1888	3,694	7,846.55	6,269,994
1883	1,909	4,070.00	3,331,963	1889	4,048	8,499.63	6,165,117
1884	2,499	5,712.50	3,829,682				

Value of real property in the District of Columbia as assessed for taxation from 1871 *to* 1890, *inclusive.*

Year.	Washington.	Georgetown.	County.	Total.
1871	$66, 818, 886	$6, 213, 467	$6, 965, 101	$79, 997, 454
1872	62, 421, 331	6, 036, 434	6, 500, 000	74, 957, 765
1873	72, 880, 380	6, 366, 488	8, 623, 056	87, 869, 924
1874	80, 539, 782	6, 272, 010	9, 621, 280	96, 433, 072
1875	82, 292, 906	6, 312, 099	9, 270, 036	97, 875, 041
1876	78, 818, 924	5, 849, 317	8, 784, 433	93, 452, 684
1877	81, 246, 847	5, 953, 932	8, 728, 622	95, 929, 401
1878	83, 101, 484	6, 028, 041	8, 480, 365	97, 609, 890
1879	75, 565, 801	5, 242, 224	6, 693, 417	87, 491, 442
1880	76, 085, 940	5, 291, 313	6, 603, 103	87, 980, 356
1881	77, 256, 610	5, 282, 096	6, 414, 372	88, 953, 078
1882	78, 516, 793	5, 266, 943	6, 525, 759	90, 308, 495
1883	80, 615, 448	5, 307, 116	6, 611, 101	92, 533, 665
1884	80, 293, 418	4, 013, 888	6, 541, 368	90, 848, 674
1885	82, 825, 255	4, 074, 358	6, 602, 851	93, 502, 464
1886	85, 132, 151	4, 160, 222	6, 760, 956	96, 053, 329
1887	96, 383, 486	4, 741, 540	7, 172, 075	108, 302, 101
1888	99, 430, 297	4, 908, 345	7, 406, 186	111, 744, 830
1889	102, 886, 043	4, 987, 632	7, 611, 679	115, 485, 353
1890	119, 613, 603	5, 395, 021	12, 617, 795	137, 626, 419

Value of personal property in the District of Columbia assessed for taxation from 1877 *to June* 30, 1890; *rate,* $1.50 *per* $100.

Year.	Assessed value.	Amount tax.	Amount collected.	Year.	Assessed value.	Amount tax.	Amount collected.
1877	$15, 419, 873. 00	$231, 298. 10	$171, 612. 61	1884	$11, 311, 622. 00	$169, 674. 33	$157, 441. 55
1878	17, 239, 051. 00	258, 585. 77	154, 837. 28	1885	12, 795. 934. 00	191, 939. 01	166, 360. 48
1879	13, 336, 929. 00	200, 053. 80	163, 364. 86	1886	12, 658. 949. 00	189, 881. 24	160, 006. 92
1880	11, 421, 431. 00	171, 321. 47	115, 577. 78	1887	11, 934. 245. 00	179, 013. 68	154, 287. 74
1881	10, 895, 712. 00	163, 435. 68	205, 966. 45	1888	10, 943, 458. 00	164, 151. 87	150, 058. 37
1882	9, 666, 272. 00	144, 994. 08	137, 838. 56	1889	11, 728, 672. 00	175, 930. 08	.....
1883	9, 028, 812. 00	135, 432. 18	142, 973. 38	1890	11, 023, 167. 00	165, 347. 51	.....

I again urge that the tax on real-estate notes and on the capital stock of building associations be exempted by appropriate legislation. Arrears of this tax, $319,559.23.

SEWERS.

Estimates of sewer division for the fiscal year 1891.

MAIN AND PIPE SEWERS.

Pennsylvania avenue between Seventeenth and Eighteenth streets	$4, 675
L street, northeast, between Third and Boundary	16, 885
K street, northwest, between Fourth and New Jersey avenue	12, 300
Fourteenth street, southeast, from river northward	15, 000
Ninth street, southeast, from river northward to N street	4, 000
Improving Boundary sewer outlet, including condemnation of right of way	15, 000
Terra-cotta pipe sewers	50, 000
Receiving-basins	10, 000
Total	127, 860

The sewer proposed for Pennsylvania avenue, between Seventeenth and Eighteenth streets, is to take the place of the present sewer, which is faulty both in gradient and size. The sewer proposed for L street, northeast, and Fourteenth street,

southeast, will provide trunk sewers for rapidly growing areas in the northeastern and southeastern sections of the city. The sewer proposed for K street, northwest, will relieve the overcharged sewers on Third and Fourth streets. The construction of the sewer on Ninth street, southeast, is for the purpose of extending the Ninth street sewer to deep water in the Eastern Branch. The boundary sewer discharges into a water course situated in part upon private property; it is proposed to deepen and straighten this channel and to acquire possession of a strip of land, of sufficient width, for the sewer to the Eastern Branch.

SUBURBAN SEWERS.

Extension of sewer on Bladensburgh road	$3,850
Extension of sewer on Eleventh street, northeast	15,000
Extension of sewer on Eckington valley	15,000
Construction of sewer on Lincoln avenue	3,000
Construction of sewer on Fourteenth street road	18,000
Extension of sewer in Rock Creek valley	10,000
Extension of Anacostia main sewer	7,000
Construction of pipe sewers	15,000
Total	86,850

The sewer on Bladensburgh road is necessary for taking care of the drainage carried by the deep ravine on the west side of the road and to enable the surface department to improve the lower section of this road. The extension of the sewer on Eleventh street, northeast, will take care of the drainage and sewage now discharged into the open stream north of Boundary street, causing a nuisance to exist there.

The extension of the sewer in Eckington valley is recommended on account of the rapid improvement of property in this valley.

The sewer on Lincoln avenue is required for the drainage of Lincoln avenue, and of R street from Lincoln avenue eastward.

The sewer on Fourteenth street road will provide for the surface drainage of the greater part of "Mt. Pleasant," and will divert surface water, now carried by the sewer on Eighth street extended, overcharging the same during heavy rain storms, to Piney Branch.

The Anacostia main sewer is required in order that the streets near the line of the ravine through Anacostia, namely, Adams and Jackson streets, may be improved.

The extension of Rock Creek sewer will carry this trunk sewer to Massachusetts avenue extended.

LIGHTING STREETS.

[Extract report of superintendent of lamps year 1888-'89.]

Estimate for street lighting 1890-'91.

Maintenance of 5,600 street lamps	$112,000
Maintenance of 600 new street lamps	9,000
Purchase of 600 lamp-posts	3,600
Purchase of lanterns	2,500
Erection of lamp-posts (gas and oil)	3,000
Painting lamp-posts and lanterns and purchase of street designations	1,500
Total	131,600

The number of electric lights contracted for for the year 1890-'91 is 181. In consequence of an error in engrossing the appropriation bill for the current year it was necessary to cut off thirteen lights on E, Tenth, Thirteenth, and Thirty-second streets west, in order to relight part of the lights on the south side of Pennsylvania avenue, between First and Fifteenth streets.

Should these lights be again started with nine still unlighted on the south side of Pennsylvania avenue between First and Fifteenth streets, the number of lights to be provided for in 1890-'91 will be 203. The amount required for this service will be $44,557, exclusive of the necessary expenses of inspection, making a total for street lighting, 1890-'91, of $176,157.

Very respectfully,

W. H. HARRISON,
Superintendent of Lamps.

PUBLIC SCHOOLS.

Office, etc.	1888-'89.	1889-'90.
Superintendents:		
White ($2,700)	1	1
Colored ($2,250)	1	1
Clerk to superintendent and secretary to trustees ($1,200)	1	1
Clerk to colored superintendent ($900)	1	1
Supervising principals:		
White, ($2,000)	6	6
Colored ($2,000)	2	2
White, high school ($2,500)	1	1
Teachers:		
Normal—		
White	5	5
Colored	5	5
Drawing—		
White	3	3
Colored	1	1
Music—		
White	2	2
Colored	2	2
Manual—		
White	*15	§23
Colored	*5	*7
Cooking—		
White	6	9
Colored	2	3
High school—		
White	32	40
Colored	11	12
General—		
White	387	405
Colored	208	219
Janitors:		
Specified	53	61
Small buildings	41	38
School-houses owned by the District	†69	†79
School-rooms owned by the District	†485	†562
School-rooms rented	72	46
Average attendance	27,619	.....
Estimated total enrollment	‡35,764	36,700
Estimated average attendance	.....	28,750
Estimated additional room needed	.....	83

*Including sewing teachers.
‡Actual.
†Excluding Washington high school.
§Including sewing and health teachers.

Buildings:		Rooms:	
Occupied	76	Owned	554
Under construction	9	Rented	17
Rented	6	Under construction	51

PUBLIC SCHOOLS, DISTRICT OF COLUMBIA.

Position.	School year ending June 30, 1890.		School year ending June 30, 1891.		No. of teachers.	
	No.	Salary.	No. teachers.	Amounts.	Increase.	Decrease.
Principal of Washington High School	1	$2,500	1	$2,500	.....	.....
Supervising principal	8	2,000	8	16,000	.....	.....
Principal colored high school	1	1,800	1	1,800	.....	.....
Supervising principal	.....	.....	2	3,400	2	.....
Director of music (white)	1	1,600	1	1,600	.....	.....
Teacher	8	1,500	8	12,000	.....	.....
Do	2	1,400	2	2,800	.....	.....
Do	4	1,300	4	5,200	.....	.....
Do	10	1,200	12	14,400	2	.....
Do	6	1,100	6	6,600	.....	.....
Do	21	1,000	34	34,000	13	.....
Do	9	975	.....	.....	.....	9
Do	14	950	16	15,200	2	.....
Do	3	900	31	27,900	28	.....
Do	4	875	.....	.....	.....	4
Do	22	850	.....	.....	.....	22
Do	39	825	54	44,550	5	.....

PUBLIC SCHOOLS, DISTRICT OF COLUMBIA—Continued.

Position.	School year ending June 30, 1890.		School year ending June 30, 1891.		No. of teachers.	
	No.	Salary.	No. teachers.	Amounts.	Increase.	Decrease.
Teacher	6	800	7	5,600	1	
Do	60	775	65	50,375	5	
Do	18	750	19	14,250	1	
Do	1	725				1
Do	84	700	89	62,300	5	
Do	4	675	4	2,700		
Do	82	650	87	56,550	5	
Do	86	550	96	52,800	10	
Do	4	525				4
Do	61	500	67	33,500	6	
Do	33	475	33	15,675		
Do	46	450	46	20,700		
Do	57	425	57	24,225		
Do	39	400	44	17,600	5	
Do	1	300	1	300		
Total	745		795	544,525	90	40

INDUSTRIAL INSTRUCTION.

DECEMBER 18, 1889.

The following estimates for manual training were carefully made and presented to the board of trustees when they met to make estimates for the public schools for the school year 1890–'91:

Increase in metal-working shop at the High School, for advanced work	$1,200
This shop has never been adequately fitted up for work.	
Increase in machinery of wood-working shop connected with the High School	1,000
This is desirable because of the necessity of giving advanced and varied kinds of work to pupils already trained in the lower shops.	
Four new cooking schools, at $300 each	1,200
Four new manual training schools, at $500 each	2,000
Material (perishable) for fourteen cooking schools, at $100 each	1,400
Material (perishable) for sixteen manual training schools, at $150 each	2,400
Material (perishable) and appliances for schools beginning sewing	800
Total for white schools	10,000
The colored schools will need at least 50 per cent. as much as the above, distributed proportionally, as above	5,000
Grand total asked by the trustees	15,000

COLORED HIGH SCHOOL.

SEPTEMBER 14, 1889.

GENTLEMEN: I have the honor to submit herewith the plans for the proposed high school for colored children. The design for this building has been made in accordance with data furnished this office by the superintendent of colored schools, and frequent consultations were held with him during the preparation of the drawings, so that the arrangement meets his approval in every particular, and is, as he states, what is required to accommodate the immediate wants of the colored schools. Congress appropriated $60,000 for the purchase of the site and the erection of the building. Nearly $25,000 has been expended in the purchase of the site, leaving a balance of $35,000, which I find is not enough to erect any part of the building designed that could be used to any advantage for school purposes.

I have made an estimate of the cost of the design with the following result: To erect the building complete it will require the sum of $114,000; to erect the center-building and stair-case halls will require the sum of $81,000. I would therefore suggest that further consideration of this building be postponed until next year, and would respectfully recommend that an additional appropriation of $79,000 be asked for. This, with the $35,000 available, will enable me to complete the building as designed. Should you deem it advisable to erect the center building and stair-case

halls and subsequently construct the east and west wings, it will require an additional appropriation of $46,000; but, in my opinion, it would be to the interest of the District to contract for the entire building complete for occupancy and thereby provide for the immediate requirements of the colored school.

Very respectfully,

THOS. B. ENTWISLE,
Inspector of Buildings.

The COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

RENTED ROOMS.

DECEMBER 18, 1889.

Number occupied by graded schools	17
Number occupied by manual training and cooking schools	24
Total	41

DISTRICT MILITIA.

HEADQUARTERS MILITIA OF THE DISTRICT OF COLUMBIA,
Washington, D. C., December 16, 1889

SIR: The appropriations estimated for the District militia are for expenses authorized by the act of March 1, 1889.

The largest item is for rent of armories, and is not only required by law, but justified by previous equities. Under an appropriation made in 1855 a building known as the armory was erected on the Mall, and dedicated by law to the use of the District militia. In 1876 the building was unoccupied, the District militia not having been reorganized after the war, and the building was availed of to store the foreign exhibits from the Centennial Exhibition presented to our Government, and under that authority was used by the Smithonian Institution, National Museum, and Fish Commission until 1885, after which time they continued in possession of it without any specific authority.

In 1887, the District militia having been reorganized, the Secretary of War made a demand upon the parties in possession to surrender the building to him, as its custodian under the law, for its legitimate uses. The matter was subsequently brought to the attention of the Senate Committee on Appropriations by a request from the Secretary of War either that the Fish Commission be provided with quarters elsewhere, or that provision be made for the District militia elsewhere (S. Report 1814, first session, Fiftieth Congress). It being deemed inexpedient to remove the Fish Commission, a clause was inserted in the sundry civil appropriation bill to transfer the building to them, and subsequently an appropriation was reported and passed by the Senate to enable the Secretary of War to rent armories for the District militia elsewhere. This appropriation was dropped in conference between the two houses on account of the passage of the bill specifically providing by law for such armories to be rented.

The only other items requiring special notice are those for the cost of the annual camp of instruction, and the majority of those items are for permanent necessities and comparatively few for current expenses. It is proper to observe that in most of the States the militia are paid for all time served on duty in camps of instruction, but that the District militia do their work and submit to instruction without pay, the appropriations being solely for actual expenses incurred.

Under the act of March 1 the militia of the District has been thoroughly reorganized and completely equipped and uniformed, and consists of eight battalions of infantry, one separate company, one battery of light artillery, one signal company, and one ambulance company, having an aggregate strength of about two thousand men.

Respectfully, yours,

ALBERT ORDWAY,
Brigadier General, District of Columbia Militia.

Hon. L. E. MCCOMAS,
Chairman Subcommittee on District Appropriation Bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 4.

TOWN-SITE ENTRIES IN OKLAHOMA.

JANUARY 6, 1890.—Ordered to be printed and recommitted.

Mr. B. W. PERKINS, from the Committee on Territories, submitted the following

REPORT:

[To accompany bill H. R. 1015.]

The Committee on Territories, to whom was referred the bill (H. R. 1015) to provide for town-site entries of lands in what is known as "Oklahoma," and for other purposes, submit the following report:

The necessity for this proposed legislation results from omissions in the legislation of the last session of Congress. Section 13 of the act of Congress approved March 2, 1889, entitled "An act making appropriation for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1890, and for other purposes," opened to white settlement a large body of lands in the Indian Territory, commonly known as "Oklahoma," and extended the town-site act of the United States over such lands. The 16th and 36th sections were reserved for school purposes, and all else was opened to settlement under the homestead law after proclamation by the President, except as the Secretary of the Interior was directed to permit town-site entries under the laws of the United States.

The President was authorized to establish two land districts for the accommodation of the settlers, and to locate land offices therein, and to appoint registers and receivers therefor, as authorized by law.

The land districts were created, the offices located, and registers and receivers appointed, and on the 22d day of April last, at 12 o'clock meridian, the settlers were permitted to take possession of the land under the proclamation of President Harrison, and the story of that occupation exceeds anything in history or in romance. When the sun went down that night almost every quarter section of land in Oklahoma had an occupant and claimant, and cities with 8,000 inhabitants had sprung into existence.

At Guthrie, where, in the morning, the only evidences of civilization were a railroad track, a station house, and a railroad agent, more than 8,000 people laid themselves down to rest at night with tents and blankets for a covering, as occupants and settlers upon the town-site of Guthrie.

Almost as many located at Oklahoma City, and at many points in the Territory growing towns and cities sprang into existence like the exhalations of a night, and have become the commercial centers of intelligent, patriotic, and growing communities.

The act under which these lands were opened to settlement restricted town site entries to 320 acres; but at Guthrie and Oklahoma City this proved entirely inadequate. With the arrival of the first trains the 320 acres were possessed and occupied, and with the additional arrivals more land became necessary, until at Guthrie more than two full sections have been occupied and possessed for town-site purposes.

This necessitated separate and distinct town or city organizations, and so we find at Guthrie "East Guthrie," "South Guthrie," "West Guthrie," "Capitol Hill," and "Guthrie" proper.

No attempt is made in this bill to consolidate these towns or cities; but their separate existence is recognized, and commissioners are provided for each, and unless the claims of homesteaders are found paramount, the commissioners are directed to enter for the benefit of the occupants of each town site the land authorized by law, leaving the organization, consolidation, and government of the said towns and cities to be provided for in future legislation, or by the Territorial legislature of Oklahoma.

Under the town-site act of the United States the sites of unincorporated towns are to be entered by the probate judges of the counties in which the towns are situated, while the sites of incorporated towns are to be entered by their respective mayors, in each instance the entry to be made for the benefit of the occupants according to their several interests.

In Oklahoma the people are without Territorial government, and hence no legal provision has been made for such affairs; and thus we find that, while the town-site act of the United States was extended over these lands, there is in fact no officer or other person authorized to make entry of the town-sites for the benefit of the people who occupy them and who have invested their money in buildings and in homes, and who, in the short period of a few months, have wrought the wonderful transformation witnessed in Oklahoma.

The homesteader in Oklahoma can acquire a title to his home under existing law, but not so with the town-site occupants, and hence the urgent necessity of this legislation. At Guthrie and at Oklahoma City buildings have been erected at a cost to their owners of from $15,000 to $30,000, and yet no title or security whatever to the grounds on which the buildings are situated, except the title and security that is given them by the patriotism, intelligence, and love of justice and fair play that dominates and controls the American people who have occupied these town-sites and who control these communities. This is a wonderful compliment to the people who have settled this new Territory in the heart of the American continent, and gives additional evidence of the capacity and genius of the American people to govern themselves, and in the absence of legalized government to form temporary expedients that settle controversies and give security to all.

President Harrison, in his annual message, in speaking of Oklahoma, says:

> Under the agreement made between the United States and the Muscogee (or Creek) Nation of Indians on the 19th day of January, 1889, an absolute title was secured by the United States to about three and a half millions of acres of land. Section 12 of the general Indian appropriation act, approved March 2, 1889, made provision for the purchase by the United States from the Seminole tribe of a certain portion of their lands. The delegates of the Seminole Nation, having first duly evidenced to me their power to act in that behalf, delivered a proper release and conveyance to the United States of all the lands mentioned in the act, which was accepted by me and certified to be in compliance with the statute.
>
> By the terms of both the acts referred to all the lands so purchased were declared to be a part of the public domain, and open to settlement under the homestead law.

But of the lands embraced in these purchases, being in the aggregate about five and a half million acres, three and a half million acres had already, under the terms of the treaty of 1866, been acquired by the United States for the purpose of settling other Indian tribes thereon, and had been appropriated to that purpose. The land remaining and available for settlement consisted of 1,887,796 acres, surrounded on all sides by lands in the occupancy of Indian tribes. Congress had provided no civil government for the people who were to be invited by my proclamation to settle upon these lands, except as the new court, which had been established at Muscogee, or the United States court in some of the adjoining States, had power to enforce the general laws of the United States.

In this condition of things I was quite reluctant to open the lands to settlement. But in view of the fact that several thousand persons, many of them with their families, had gathered upon the borders of the Indian Territory, with a view to securing homesteads on the ceded lands, and that delay would involve them in much loss and suffering, I did, on the 23d day of March last, issue a proclamation declaring that the lands therein described would be open to settlement under the provisions of the law on the 22d day of April following, at 12 o'clock noon. Two land districts had been established, and the offices were open for the transaction of business when the appointed time arrived.

It is much to the credit of the settlers that they very generally observed the limitation as to the time when they might enter the Territory. Care will be taken that those who entered in violation of the law do not secure the advantage they unfairly sought. There was a good deal of apprehension that the strife for locations would result in much violence and bloodshed, but happily these anticipations were not realized. It is estimated that there are now in the Territory about 60,000 people; and several considerable towns have sprung up, for which temporary municipal governments have been organized. Guthrie is said to have now a population of almost 8,000. Eleven schools and nine churches have been established, and three daily and five weekly newspapers are published in this city, whose charter and ordinances have only the sanction of the voluntary acquiescence of the people from day to day.

Oklahoma City has a population of about 5,000, and is proportionately as well provided as Guthrie with churches, schools, and newspapers. Other towns and villages having populations of from one hundred to a thousand are scattered over the Territory.

In order to secure the peace of this new community, in the absence of civil government, I directed General Merritt, commanding the Department of the Missouri, to act in conjunction with the marshals of the United States to preserve the peace and upon their requisition to use the troops to aid them in executing warrants and in quieting any riots or breaches of the peace that might occur. He was further directed to use his influence to promote good order and to avoid any conflicts between or with the settlers. Believing that the introduction and sale of liquors, where no legal restraints or regulations existed, would endanger the public peace, and in view of the fact that such liquors must first be introduced into the Indian reservations before reaching the white settlements, I further directed the general commanding to enforce the laws relating to the introduction of ardent spirits into the Indian country.

The presence of the troops has given a sense of security to the well-disposed citizens and has tended to restrain the lawless. In one instance the officer in immediate command of the troops went further than I deemed justifiable in supporting the *de facto* municipal government of Guthrie, and he was so informed and directed to limit the interference of the military to the support of the marshals on the lines indicated in the original order. I very urgently recommend that Congress at once provide a Territorial government for these people. Serious questions, which may at any time lead to violent outbreaks, are awaiting the institution of courts for their peaceful adjustment. The American genius for self-government has been well illustrated in Oklahoma, but it is neither safe nor wise to leave these people longer to the expedients which have temporarily served them.

The provisions of the bill are simple and readily comprehended and understood, and in the judgment of your committee well designed to promote and secure the objects intended, and this legislation is so important and urgently needed by the people living in the towns and cities of Oklahoma that we trust its wisdom and propriety will be appreciated and made manifest to all.

The details and manner of executing the trust are left largely with the Secretary of the Interior, as under the town-site act of the United States, and we sincerely believe we can depend upon his wisdom to prescribe rules and regulations that will protect every claimant in his lawful demands, and settle expeditiously and equitably the various contests

and conflicting interests growing out of the town-site settlements of Oklahoma.

Because of the importance and growth of some of the towns of Oklahoma, and the conflicting interests therein, your committee are of the opinion that it is better that the town-site entries should be made by disinterested parties named as commissioners than by city officers, even if they had legalized government, and properly chosen officers to perform this service.

In consequence of amendments suggested by your committee to the original bill it is recommended that all immediately after the enacting clause be stricken from the original bill, and that the bill reported by the committee be inserted.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 5.

ACCOUNTS OF LATE SERGEANT-AT-ARMS.

JANUARY 13, 1890.—Recommitted to the Select Committee to Investigate the Accounts of the Sergeant-at-Arms of the House and ordered to be printed.

Mr. ADAMS, from the Select Committee to Investigate the Accounts of the Sergeant-at-Arms of the House, submitted the following

REPORT:

The select committee appointed to investigate the accounts in the office of the late Sergeant-at-Arms, to whom was referred, by a resolution of the House adopted December 12, the duty of reporting upon the effects or results of the late defalcation in said office, have had the said matter under consideration, and report thereon as follows:

The principal question on which the House desired the opinion of the committee is the question whether the loss caused by the late defalcation should fall on the Government or on the members of the House. Ought the Delegates and Members to receive their full salaries for the period ending December 4, 1889, regardless of the fact that Craven E. Silcott, cashier of the late Sergeant-at-Arms, drew from the Treasury, and in part appropriated, funds out of which their salaries ought to have been paid?

We believe that the question ought not to be decided on merely technical grounds. Members ought not to vote to appropriate money out of the Treasury to make good the loss of funds substantially their own merely because they have the power of appropriation, and because the money lost had not actually come into their hands.

On the other hand, members ought not to lose the compensation allowed them by law, which they never in fact received, merely because the Treasury holds their receipts, signed in advance, and known by the Treasury officials to have been so signed; nor ought they to lose their salaries allowed by law and never in fact received by them merely because the Treasury officials have seen fit to adopt a system of keeping the accounts by which it is made to appear, contrary to the fact, that the salaries have been paid. The question is not a question of form or of technicality. It is a question of substantial justice. The House and the Treasury Department ought so to regard it; the country will so regard it, in any event.

The question may thus be stated: On the 30th of November, 1889, Craven E. Silcott, cashier of the late Sergeant-at-Arms, pursuant to a custom which prevailed for many years, took to the United States Treasury a large number of certificates for members' salaries, dated November 27, signed by the Clerk of the preceding House, and each containing at the foot of the Clerk's certificate a receipt signed by the member for the sum therein certified to be due. In exchange for these certificates, the cashier of the Treasury handed to said Silcott about $60,000 in currency, and a small amount in Treasury drafts, being in

all the amount named in the aggregate of the certificates handed in by him.

The question is whether, according to the rules of plain, substantial justice, it ought to be assumed that when this money was passed to Silcott by the Treasury teller it was received by the members themselves. Up to that instant the United States Government owed a certain sum for Congressional salaries. Did the United States Government at that instant, and by the act of the Treasury teller in paying and the act of Silcott in receiving the money, discharge the obligation? We believe that members of Congress did not then and there receive the money due them. The United States Government did not then and there discharge its obligation to the Delegates and Members of the Fifty-first, Congress, or to any one of them.

If payment to Silcott was payment to a member of Congress, it must have been because Silcott was the agent of that member to receive the money. It does not appear that he was in fact the agent of any member. Agent of the members collectively he could not have been. The members of the Fifty-first Congress had not at that time acted collectively in any way on any matter. The House had not yet organized, or even met. If it had, it would have made no difference. There is no such thing as a collective claim of all the members for their aggregate salaries. The claim of each member for his salary is a several claim. If it can lawfully be collected by an agent, he alone can appoint the agent. If all the members of the House save one were to assume to discharge the claim of that one member for his own salary they could not do it, any more than they could discharge a mortgage held by him as a part of his private estate. If all the members of the House save one were to assume to appoint an agent to collect the salary of that one member they could not do it, any more than they could appoint his agent to sell his real estate.

The two houses of Congress, it is true, may, by an act of Congress and the House of Representatives may, by a resolution of the House, regulate the manner in which the salary of each member shall be paid. They may authorize the Sergeant-at-Arms, or his cashier, to draw the money from the Treasury and pay it to the individual member. They might in this way make him a disbursing officer, and define his duties as such. Even an act of Congress or a resolution of the House could not create the relation of private agency between the Sergeant-at Arms and an individual member of the House without the assent of that member.

If Silcott was the private agent of the members to draw their salaries he must be held to have been appointed as the agent of each individual member. It has not been claimed that there is any difference in this regard between those members who happened to know him intimately and those members who had never met him, and did not even know that such a man existed. Silcott was the cashier of John P. Leedom, who had been chosen Sergeant-at-Arms of the House of Representatives of the Fiftieth Congress. The salaries now in question were salaries due members of the Fifty-first Congress. Many of them had not sat in the Fiftieth Congress. Some of them had never sat in any Congress when Silcott ran away with the money out of which their salaries ought to have been paid. They were first elected to Congress in November, 1888; they came here during the second session of the Fiftieth Congress to make the acquaintance of other members and familiarize themselves with the proceedings of the House. They were informed that by a statute passed nearly twenty years ago they could draw their sal-

aries monthly on certificates of the Clerk of the outgoing House. Blank certificates were laid before them, and they were requested to sign their names at the foot of the certificates, as had been customary for many years. They signed, as they had reason to suppose, in compliance with the law under which their salaries were to be paid. To say that by signing these certificates they created the relation of principal and agent between themselves and any person whatever is a forced and unnatural argument, which would not stand before any jury or any judge in the United States.

Still more unnatural is it to infer that they thus appointed as a private agent a person not named in the certificate itself, and not appearing on the face of the certificate to have any right to the custody of the certificate after it had been signed by the member. The certificate is the certificate of the Clerk of the House. If a member can be assumed to have trusted any one by signing the receipt in advance at the foot of the Clerk's certificate, it is the Clerk whom he trusts and not the Sergeant-at-Arms or his cashier. By thus signing, the member does in fact trust, and has a right to trust, the Clerk of the House in his public capacity as an officer of the United States on whom devolves the duty of aiding the member to receive his salary. In fact, the member trusts the Government of the United States, of which the Clerk of the House is a part. It is absurd to suppose that by thus dealing with a public official in the regular course of his official duty, he intends to appoint as his personal agent the individual who at the time happens to be the incumbent of the office.

If it is absurd to suppose that the members who signed receipts at the foot of the Clerk's certificates intended thereby to appoint John B. Clark, who at that time was the Clerk of the House, as their personal agent to collect their salaries, still more absurd is it to suppose that they intended to give John B. Clark authority to transfer these certificates to John P. Leedom, and thereby constitute John P. Leedom their personal agent for the same purpose, and that John P. Leedom, not as an officer of the Government, but in his private capacity, having thus become by substitution the personal agent of the member of Congress for the receipt of hid salary, had the right to substitute for himself as such agent another person, Craven E. Silcott, who, if he chose, could substitute still another person, Colonel Roberts, who was the messenger in the office of the late Sergeant-at-Arms, and that Colonel Roberts would thus become the private agent of the member of Congress to such full extent that payment by the Treasury into the hands of Colonel Roberts is to be considered as payment into the hands of the member himself; and all this in the face of section 3477 of the Revised Statutes, according to which payment to Roberts, Silcott, Leedom, or Clark would be a violation of law if the persons named had no other right to receive the money than as the personal agent of the member to whom it is due.

This awkward and unnatural theory of private agency can hardly be explained, except as an attempt on the part of a former official of the Treasury Department to force the facts of the external world into correspondence with the system of accounts which prevails in the Treasury. Just because the Sergeant-at-Arms does not appear on the books of the Treasury Department as a public agent for the disbursement of the salaries of members, therefore he can not be such public agent at all. Not being a public agent, and evidently being an agent of some sort, it is inferred that he must necessarily be a private agent of each individual member, whether the individual member so understands or not.

It is believed that the law governing the relation of principal and

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agent is clear and simple. It can not be thus wrested "ten thousand leagues awry" from common sense and common justice. B can become the agent of A only in one or the other of two ways: first, when A intentionally appoints B as his agent; secondly, when A so acts as to lead a third party to believe, and to act upon the belief, that A has so appointed B. It is incredible that members of the House, many of whom did not know Clark, Leedom, Silcott, or Roberts by sight, and had not been members of the former House which had put them in office, actually intended to appoint them or either of them their personal agent to handle their money and discharge their claim upon the Government. It is equally incredible that the officials of the Treasury so believed and acted upon the belief by paying out large sums of money, in two-fold violation of law, to an agent of members for salaries not yet due.

It is far more reasonable to regard the Sergeant-at-Arms of the House as a public officer charged originally by custom and afterwards by sanction of the statutes with the duty of disbursing salaries of members.

It appears from the records of the Treasury Department that during the First Congress warrants for payment of salaries were drawn in favor of individual members, and also in favor of Frederick Augustus Muhlenberg, Speaker, to pay compensation and mileage to the members. From the beginning of the Second to the end of the Twenty-fifth Congress the warrants were drawn in favor of the Speaker. During this time, therefore, the Speaker was regarded by the Treasury Department as a disbursing officer. He was not made such by express statute. The law in force during all of the time merely provided "That the pay which shall be due members of the House of Representatives shall be certified by the Speaker, and the same shall be passed as public accounts and paid out of the public Treasury."

The manner in which payments were actually made under the statute above cited, is stated in a report of the Committee on Accounts of the Twenty-fifth Congress. We quote the language of a part of this report:

Finding the practice to vary from the mode designated in the law, the committee directed their inquiry as to the time when and the manner in which this discrepancy had been produced. They have not been able to discover anything on record in relation to the change. Indeed, they learn there is now no record of it, it having been consumed by fire; but they have learned orally from an officer of the House of long service that it was, in early times, and when the members of the House did not exceed seventy in number, so exceedingly inconvenient and troublesome, both to the Treasury and to members, to execute the provision of the law literally, that an arrangement was made, unofficially or privately, because not being authorized by law it could not be legally and officially done, between the Secretary of the Treasury and the Speaker of the House, by which the money appropriated for the pay and mileage of members should be advanced to the Speaker, who, instead of giving the members certificates of what was due should pay them the amount, taking their receipts for the same, which receipts, with his general account of payments, should be passed upon at the Treasury by the accounting officers after the termination of the session. This was deemed a compliance with the spirit of the law, and this course has been followed up to the present time.

It was early found that the Speaker was unable to attend to this business exclusively himself satisfactorily and with a due regard to his other high official duties, and as no provision existed or has ever existed for the employment of a clerk to assist him, he early obtained the assistance of the Sergeant-at-Arms. It was no more a part of the duty of the Sergeant-at-Arms, then or now, to assist the Speaker in the duty of paying the members than it was then or is now the duty of the Speaker to act as the agent of the Treasury. Both are voluntary and gratuitous; both essentially contribute to public convenience and the dispatch of public business. This practice has so long prevailed that it is believed there is scarcely a member in the House who does not suppose it is a part of the official duty of the Speaker and of the

Sergeant-at-Arms not only to settle and audit the accounts of the members, but actually to obtain the money and place it in their hands.

The committee have already observed that it is their opinion that this mode of paying the members essentially contributes to the public convenience and to the dispatch of the public business. It has prevailed too long and has become too completely identified with the usage of the House to make a change proper or practicable without endangering the harmonious action of public affairs. It is therefore no purpose of the committee to recommend a change; but at the same time it would seem to be consistent and proper, in the opinion of the committee, that some legislative sanction should be given to a measure of the high responsibility and importance of this, that it should not rest alone upon custom or antiquity for its sanction or authority.

The committee therefore think that the Sergeant-at-Arms should be called upon to enter into bonds, with surety to be approved by the Speaker and filed with the Clerk, for them to account for the money coming into his hands for the pay of members.

In accordance with the foregoing views, the committee report the following resolutions:

Resolved, That the Speaker of the House shall, at the commencement of Congress, designate to the Secretary of the Treasury some safe and suitable bank or place of deposit in which the Secretary of the Treasury shall deposit the money for the mileage and per diem pay of the members of the House of Representatives, subject to be drawn out by the check of the Speaker, indorsed by the member of the House entitled to mileage and per diem pay.

Resolved, That it shall be the duty of the Sergeant-at-Arms to keep the accounts for pay and mileage of the members, to prepare checks for members, and if required to do so, to draw the money on said checks for the members, the same being previously signed by the Speaker and indorsed by the member in whose favor the same may be drawn, and pay over the same to the member entitled thereto.

Resolved, That the Sergeant-at-Arms give bond, with security, to the United States in a sum not less than $5,000 nor more than $10,000, at the discretion of the Speaker, and with such security as the Speaker may approve of, faithfully to account for the money coming into his hands for the pay of the members of the House, and that, as a compensation for his increased duties and liabilities, he be allowed the sum of $300, to be paid out of the contingent fund of the House.

The resolutions thus reported by the committee were adopted by the House April 4, 1838.

These resolutions appear to have simply sanctioned without changing the custom which had theretofore prevailed in regard to the manner of paying the salaries of members. In the report of the Committee on Accounts, above quoted from, reference is made to a defalcation of several thousands of dollars which had taken place in the office of the Sergeant-at-Arms in the year 1832. This defalcation was made good to the individual members out of the contingent fund of the House. At that time, as at the date of the report referred to, it was the custom of the Speaker to draw money from the Treasury and deposit it in some bank in the city of Washington for the payment of members' salaries. Checks were then drawn by the Speaker against the funds so deposited in favor of the individual member, each check containing a recital that the sum therein mentioned was due on account of salary. A check thus drawn was indorsed by the member and handed to the Sergeant-at-Arms, who cashed it at the bank. In many cases the then Sergeant-at-Arms cashed the check but failed to pay over the proceeds to the member entitled thereto. In all such cases the individual members, on making a statement of the facts, were allowed to receive out of the contingent fund of the House the amount which the Sergeant-at-Arms had thus failed to pay.

It will thus be observed that from the beginning of the Government down to 1838, the Speaker and the Sergeant-at Arms acted in regard to the payment of members' salaries not as agents of the individual member, but as agents of the Treasury. The same practice appears to have prevailed many years later. Substantially the same practice appears to have prevailed to the present time,

In the Twenty-sixth Congress the warrants covering the money for the mileage and compensation of members were drawn partly in favor of Robert M. T. Hunter, Speaker, partly in favor of William Selden, Treasurer of the United States, as agent for paying compensation and mileage of members, partly in favor of Corcoran & Riggs, assignees of sundry members, and partly in favor of individual members themselves.

In the Twenty-seventh Congress the warrants ran in favor of the Speaker. In the Twenty-eighth Congress they ran partly in favor of the Speaker, partly in favor of the Bank of the Metropolis, to pay sundry orders of the Speaker in favor of members assigned to said bank, and partly in favor of George W. Jones, to pay orders of the Speaker assigned to him. From the Twenty-ninth to the Thirty-second Congress, both inclusive, the warrants ran in favor of the Speaker. In the beginning of the Thirty-third Congress, a change took place in the mode of drawing the warrants. The occasion of this change does not appear, nor does it appear that there was any change in the law or the practice regarding the actual payment of members' salaries.

It is believed that the mode of payment which prevails to-day is in substance the same which has prevailed during the greater part of the last sixty or seventy years. The change referred to is in the mode of drawing the warrant. From December 3, 1853, down to the present time, the warrants to pay the compensation and mileage of members of the House have been drawn in favor of the Treasurer of the United States, and the moneys so advanced to pay the compensation and mileage of members have been charged to the Treasurer of the United States on the books of the Treasury Department, and the accounts for pay and mileage of members have been settled in the name of the Treasurer. It is to be observed that the warrants referred to are drawn by the Secretary of the Treasury upon the Treasurer of the United States in favor of the Treasurer himself, and it is stated to have been the custom for many years to draw these warrants after the payments have been in fact made by the Treasurer. During the course of the month the Treasurer pays salaries of members out of his current cash on Speaker's, or Clerk's certificates presented to him. At the end of the month these certificates are turned over by him as vouchers and the warrant is drawn for the corresponding amount to re-imburse him for the sums thus advanced. It is believed that this change which took place in 1853 is simply a change in the mode of stating the account. The manner of actual payment, and the relations of the Speaker and of the Sergeant-at-Arms to the Treasurer and to the individual members do not appear to have been changed at all.

The practice above referred to of drawing the warrant at the end of the month to re-imburse the Treasurer for the payments he has made during the month seems to have been introduced by Secretary Boutwell. In a letter to Treasurer Spinner, dated June 23, 1870, he recommends it on the ground of public convenience. It might seem hard to reconcile the practice with section 305 of the Revised Statutes, which provides that the Treasurer shall receive and keep the moneys of the United States and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by either Comptroller and recorded by the Register, and not otherwise. Secretary Boutwell doubtless regarded the Sergeant-at-Arms as an agent of the Treasury, and the money in his hands as being still in the Treasury until the end of the month, when the warrant was drawn. As the money was not paid out by the Sergeant-at-Arms to the members till the fourth day of the following month, he probably thought the practice would be a substantial com-

pliance with the law. If, however, the payment by the Treasurer to the Sergeant-at-Arms is the payment of a private claim against the Treasury, it is hard to understand, in view of the above statute, how the Secretary of the Treasury could have advised it and successive Treasurers could have assented to it for nearly twenty years.

The resolutions before referred to, adopted by the House in the Twenty-third Congress, were intended, not to establish a new mode of paying the salaries of members, but to sanction the existing mode. The custom by which the Sergeant-at-Arms acts as a public agent to pay the salaries of members of the House has existed without substantial change almost from the beginning of the Government down to the present day. It has been sanctioned, not merely by the rules of the House, but by acts of Congress. There are several statutes which can have no meaning except by a reference to it. His term of office, like the term of office of the Clerk of the House, continues during the recess after the expiration of the House which elected him, not because the law expressly declares that it shall so continue, but because the law imposes upon him duties that must be performed during the recess, and therefore implies the continuation of his term. In like manner the law makes him a disbursing officer by enactments which would be nugatory if he were not one.

Section 38 of the Revised Statutes provides that—

> Representatives and Delegates elected to Congress, whose credentials in due form of law have been fully filed with the Clerk of the House of Representatives in accordance with the provisions of section 31, may receive their compensation monthly from the beginning of their term until the beginning of the first session of each Congress upon a certificate in the form now in use, signed by the Clerk of the House.

The certificate then in use was a certificate signed by the Speaker. For more than fifty years the Speaker had been in the habit of handing this certificate to the Sergeant-at-Arms to collect the money certified therein to be due. It was undoubtedly the intention of the statute that members and delegates should receive their pay during the recess substantially in the same way in which they had received it during the sessions of Congress. It is reasonable to suppose that the certificates signed by the clerk, like the certificates signed by the Speaker, were to be entrusted to the Sergeant-at-Arms to collect the money due thereon, as had been done for many years.

Section 40 of the Revised Statutes provides that—

> The Sergeant-at-Arms of the House shall deduct from the monthly payments of each Member or Delegate the amount of his salary for each day that he has been absent.

How could he deduct any amount from the salary unless the money to pay the salary was in his hands?

Section 45 of the Revised Statutes provides that—

> The compensation of Representatives and Delegates, as provided in section 35, shall be in lieu of all pay and allowances except actual individual traveling expenses from their homes to the seat of Government and return by the most direct route of usual travel, once for each session of the House, to which such Representative or Delegate belongs, to be certified under his hand to the disbursing officer, and filed as a voucher.

Who is the disbursing officer to whom the amount is to be certified? With whom is it to be filed as a voucher? The custom is to certify the amount to the Sergeant-at-Arms and to file the voucher with him. That has been the custom for many years.

By the annual appropriation bills there has been appropriated each year for many years the pay not only of the Sergeant-at-Arms of the House of Representatives, but for the pay of his deputy, his cashier, and his book-keeper. These appropriations of public money must be pre-

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by the cashier of the Treasury, placed in the
cashier of the late Sergeant-at-Arms, in his offi
regular course of his official business, and were
appropriated to his personal use.

Your committee believe that the

VIEWS OF MR. HEMPHILL.

Not being able to concur in the report of the majority of the committee, it seems proper that I should state briefly my views, the reasons therefor, and the remedy suggested.

If the questions arising out of the defalcation in the office of the late Sergeant-at-Arms could all be determined by simply deciding whether he was in law a disbursing officer of the Government, there would not be so great difficulty in reaching a conclusion on that one point, for, while there is no statute as in the case of the Secretary of the Senate, expressly declaring that he is a disbursing officer of the Government, it seems to me that the preponderance of the authorities as gathered from the various statutes on the subject lead to the conclusion that he is a disbursing officer. But that in actual practice the late Sergeant-at-Arms has been more than a simple disbursing officer, and that for many years, and in various ways, he has also acted as the private agent of the members of the House, and has in this way commingled private and public funds and thus created serious complications in the affairs of his office, is made clear by the testimony taken by the committee.

On account of the number of these questions and the difficulty of having them all properly settled in so large a body as this, as well as with the hope of relieving members of the embarrassment of voting upon a matter in which they have a direct pecuniary interest, I have thought it best to bring in a bill referring all questions involved to the Court of Claims for a speedy adjudication. That the questions arising out of the affairs of the office of the Sergeant-at-Arms are not few or easy of just and practical solution will, I think, appear from the following facts drawn from the testimony taken before the committee:

In the ordinary course of business as transacted in the office of the Sergeant-at-Arms, it has been his custom for years to receive money and checks from Members of Congress on deposit, and to either discount himself or have discounted the notes of members for their own benefit. When the deposit was of cash it was at once put into the teller's drawer undistinguished from any other funds and paid out in the usual course of business, if it was of a check this was sent to the National Metropolitan Bank in this city for collection, and in either case whether money or check, the amount was entered on the books of the Sergeant-at-Arms to the credit of the member making the deposit, and in the same account with his salary.

When notes were discounted, whether by use of the private funds of the Sergeant-at-Arms or of the public funds, or rediscounted at the National Metropolitan Bank, the amount of the note, less the discount, was likewise credited to the Member of Congress' account and checked out as needed.

Transactions of the character above described were of constant occurrence and it is manifest that they formed no part of the duties of

to determine whether this is due on a
salary. This, of course, must be first settle
the amount of deficiency on account of th
know what sum would be required to be ap
Treasury to meet such loss.

The transactions between the office of the
Metropolitan National Bank were of frequen
at times large amounts. They were kept in a
the bank in the name of C. E. Silcott, cashi
entered as credits all checks given by memb
amounts arising from the discount or redisco
made through the office of the Sergeant-at-Ar

The account kept of these transactions in th
of the Sergeant-at-Arms are entirely different
results. The amount drawn out between Apri
1889, according to the bank's books, is $29,271
pearing by the books in the Sergeant-at-Arms'
posited between April 26, 1888, and June 21, 18
appears to be $29,914.90 greater than by the l
these two sums so deposited and checked out t
of credit to Silcott's account of $643.86, which l
for in any way.

It further appears that the balance due the la
December 4, 1889, from the National Metropoli
its books, was $16,657.34, and according to his l
making a difference of $3,244.98. On June 1
credit for thirty-five discounts, $14,560. This i
five notes for $416 each made out by Silcott, and
signed by him with the names of different M
which certainly 26 were forgeries, and probably
these notes on November 27, 1889, with funds
ury of the United States on certificates of men
salaries. The $16,657.34 reported by the bank
the account kept with Silcott, cashier, has beer
counted as a part of the assets of the late Serg

From this statement of facts there naturally a

1. Whether the true amount

the proper owners. And this will depend as matter of law largely upon whether the bank had notice that these were public funds, or sufficient notice to put them upon inquiry.

Shortly before Silcott absconded he drew money from the United States Treasury as follows:

November 27, 1889		$36,608.00
November 29, 1889		36,206.70
November 30, 1889		60,627.48
Total		133,442.18
From which he paid:		
November 27, 1889, to Teller Ballentine	$21,608.00	
November 27, 1889, to bank	14,560.00	
November 29, 1889, to Teller Ballentine	36,206.70	
November 30, 1889, to Teller Ballentine	252.00	
		72,626.70
Leaving unaccounted for		60,815.48

But according to the statement made up from the office of the Sergeant-at-Arms the total deficit amounts to $70,708.96, being $9,993.48 in excess of the amount retained by Silcott from the funds he drew from the United States Treasury just prior to his departure.

Where this sum of nearly $10,000 was taken from, whether from public funds or from the private deposits of members, or from both alike, whether it was taken just before Silcott's sudden departure, or is a deficit resulting from a series of illegal and wronghtful acts, the testimony fails to show. And yet it is clear that the source from which this $9,993.48 came must first be determined before the House can say what amount is to be appropriated from the Treasury to make good the loss of public funds.

As to whether the members of the House will vote on a measure directly involving their own pecuniary interests must of necessity, and may with propriety, be left to each member to decide for himself. It appeared to me proper, however, to submit a proposition by which they might be relieved from the embarrassment of their present situation and from the necessity of violating one of the standing rules of all judicial and legislative assemblies and which the House of Representatives has for many years declared shall be the rule of its conduct.

On account of the questions stated above and others arising out of the facts in this case, as also on account of the delicacy of the situation of members, it seems to me to be best to submit the whole matter to the Court of Claims for adjudication, and I ask leave to submit a bill for that purpose.

JNO. J. HEMPHILL.

A BILL to provide for the speedy settlement of all questions arising out of the defalcation of the late Sergeant-at-Arms and making an appropriation to meet the deficit.

Whereas an embezzlement has been made of funds drawn by the late Sergeant-at-Arms of the House of Representatives from the Treasury of the United States for the payment of Members' and Delegates' salaries, leaving and overdue and unpaid balance thereof; and

Whereas a portion of the cash and assets remaining in the custody of said officer consist of special deposits, giving rise to claims of priority and presenting questions properly determinable by judicial procedure; and

Whereas the question of the just liability of the Government to pay the members such unpaid salary is likewise judicial in character: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any member of the House of Representatives or Delegate

..., eighteen hundred and eighty-nine,
actually paid to them, after applying so much as m
from the funds now in the Treasury as a special deposit
Government is justly liable for said balance of said s
is necessary to pay the balance due thereon. Fourth
ment is not liable for the balance of said salaries left u
the sum as above specified, then said court shall dete
bers and Delegates to said fund and provide a scheme f

SEC. 3. That any and all persons making claim to any
drafts now in the United States Treasury as a special
formal pleadings, parties to said action, and have the

SEC. 4. That the Court of Claims shall give said cause
and shall hear and determine it with all convenient spe
cision to the House of Representatives.

SEC. 5. That there be, and hereby is, appropriated fro
not otherwise appropriated, so much money as may be
of said court to pay the salaries of Members and Delegate
thereto the proper amount from the funds now on spe
under the resolution of the House.

VIEWS OF MR. HOLMAN, A MEMBER OF THE COMMITTEE.

The undersigned, a member of the committee, begs leave to submit the following views in relation to the subject referred to the committee:

The undersigned is not able to concur in the opinion expressed by the majority of the committee that the Sergeant-at-Arms of the House of Representatives is a disbursing officer of the United States. There seems to be no act of Congress that declares him to be a disbursing officer or that places around the funds that might come into his hands the safeguards provided by law to protect public funds in the hands of a disbursing officer of the United States.

The bond of a disbursing officer is, by law, subject to the approval of the First Comptroller of the Treasury Department, the highest accounting officer of the Treasury, and is required by law to be filed in his office. There is no act of Congress authorizing the Sergeant-at-Arms of the House to receive public money for disbursement or requiring him to give a bond for the safe-keeping and disbursement of funds that should come into his hands. The fourth rule of the last House of Representatives and of former Houses for many years imposed on the Sergeant-at-Arms of the House, among other duties, the duty to "keep the accounts for the pay and mileage of Members and Delegates and pay them as provided by law," and by the third clause of the same rule it is provided as follows:

> He shall give bond to the United States, with sureties to be approved by the Speaker, in the sum of $50,000 for the faithful disbursement of all moneys intrusted to him by virtue of his office.

But this is a rule of the House of Representatives, not a public law; it is not a law of the Treasury Department or of its accounting officers. It has only been and could only be the rule of each successive House of Representatives which thought proper to adopt it, and its force terminated with the House which adopted it. So, while the Sergeant-at-Arms might hold his office from the 4th day of March, when a Congress expired, until his successor was elected and qualified, yet during that interval there would not be even a rule of the House declaring his duties as to the pay and mileage of Members and Delegates, or providing for a bond for the "faithful disbursement of all moneys intrusted to him by virtue of his office;" hence the bond of the late Sergeant-at-Arms, as will be seen, only applies to the Fiftieth Congress, which expired on the 4th day of March, 1889, for on that day the rule of the House which required the bond would expire.

It thus appears that from the 4th of March, 1889, until the meeting of this Congress on the first Monday in December, 1889, there was not even a rule of the House of Representatives authorizing or requiring

[illegible] and sealed by us December 12, 1887.

The condition of the foregoing obligation is such that Sergeant-at-Arms of the House of Representatives, Fift faithfully account for all money coming into his hands f the House of Representatives of the Fiftieth Congress, th and of no effect; otherwise to be in full force.

Jo
Da
C.

In presence of—

WASH. L. JACQUES as to John P. Leedom and Davi

Approved.

Speaker of the

The undersigned hereby make oath and say that they above their liabilities, more than fifty thousand dollars, th foregoing bond.

COUNTY OF WASHINGTON,
District of Columbia, ss:

Sworn and subscribed by C. N. Felton before me this 15t
[SEAL.]

COUNTY OF NEW YORK,
State of New York, ss:

Sworn and subscribed by David R. Paige before me th 1887.
[SEAL.]

W
Not

This bond, of course, rested on the fourth rule Representatives and it would seem expired with other rules on the 4th day of March, 1889.

But the public funds of a disbursing officer of placed under the safeguard of the accounting offi The disbursing officer draws his warrant on the Tr States against the fund he is authorized to disbur placed to his credit and it is the high duty of the the Treasury to see to it, by requiring vouchers f that the sums placed to his [illegible]

ference in the mode prescribed by law for paying the compensation of Senators and of Members and Delegates of the House:

SEC. 46. The compensation of Members and Delegates shall be passed as public accounts and paid out of the public Treasury.

SEC. 56. The money which may be appropriated for the compensation of Members and officers, and for the contingent expenses of the Senate, shall be paid at the Treasury, on requisitions drawn by the Secretary of the Senate, and shall be kept, disbursed, and accounted for by him according to law, and the Secretary shall be deemed a disbursing officer.

The Members of the House will, of course, act in perfect good faith towards the public Treasury. If in their opinion the Sergeant-at-Arms is a disbursing officer of the United States, then of course it will be held that the loss of the money embezzled while under his control must fall on the Government. If, on the other hand, it is found that under the law he was not a disbursing officer, but only collected from time to time from the Treasurer of the United States for Members and Delegates money due them on accounts against the Treasury duly certified, and that money thus collected was afterwards embezzled, it would seem to be inevitable that the loss must fall on the gentlemen for whom the collections were made. No technical rules should control in such an inquiry, nor should irregular methods resulting from a long-continued neglect of proper legislation be recognized as having the force of law.

The fact is that the method of paying the salaries of Members of the House and Delegates has been anomalous almost from the beginning. From a very early period of the history of Congress the Secretary of the Senate has been the disbursing officer of the fund for the payment of the salaries and mileage of Senators and the contingent fund of the Senate, and the accounts have been kept with him in the office of the Treasurer of the United States. And for many years the Clerk of the House has been, by law, the disbursing officer of the contingent fund of the House, leaving the disbursement of the funds from time to time appropriated for the pay of the salaries and mileage of Members of the House and Delegates standing alone. Copies of the bonds of the Secretary of the Senate and of the Clerk of the House as disbursing officers are as follows:

A.

Know all men by these presents, that we, Anson G. McCook, N. L. Anderson, and W. B. Franklin, are held and firmly bound to the United States of America in the sum of $20,000, to the payment whereof we bind ourselves jointly and severally, our joint and several heirs, executors, and administrators.

Witness our hands and seals this 19th day of December, 1883.

The condition of the above obligation is such that if the said Anson G. McCook, who has been elected Secretary of the Senate of the United States, shall well and faithfully apply and disburse such funds as may be drawn by him as disbursing officer of the Senate from the Treasury of the United States, then the above obligation to be void otherwise to remain in full force.

ANSON G. MCCOOK. [SEAL.]
N. L. ANDERSON. [SEAL.]
W. B. FRANKLIN. [SEAL.]

Signed, sealed and delivered in presence of—
GEO. S. MCCLELLAN.
L. A. HARRIS.

CITY OF WASHINGTON,
District of Columbia, ss:

Before me, the subscriber, a notary public, personally appeared Anson G. McCook, N. L. Anderson, and W. B. Franklin, who are personally known to me to be the parties who signed the foregoing paper, and acknowledged the same to be their act and deed for the purpose therein set forth.

Witness my hand and notarial seal this 19th day of December, A. D. 1883.

[R. B. Nixon, Notary Public, Washington, D. C.]

R. B. NIXON,
Notary Public.

B.

Know all men by these presents that we, Edward Mc
and Joseph A. Scranton, are held and firmly bound unto t
in the penal sum of $20,000, lawful money of the United
which, well and truly to be made, we hereby jointly and s
heirs, executors, and administrators.

Sealed with our seals and dated this 6th day of Decemb
1889.

The condition of the above obligation is such that wh
ward McPherson was, on the 2d day of December, 1889,
Representatives of the United States of America to be Cle
sentatives: Now, if the said Edward McPherson shall fai
all such moneys as shall come into his hands out of the
which shall be made for defraying the contingent expens
entatives, then this obligation shall be void and of no effec
main in full force and virtue.

$20,000	EDW.
$20,000	THOS.
$20,000	J. A.

DISTRICT OF COLUMBIA,

City and County of Washington, ss:

Be it remembered that on the 6th day of December, 1889,
fore the undersigned the above-named Edward McPherson,
Joseph A. Scranton, and made oath that they are worth, ov
tions, the amounts set opposite their respective names, to wi

And further deponents saith not.

EDW.
THOS.
J. A.

Sworn and subscribed the day and date last above mentio
[SEAL.]

The First Comptroller's office has very kindly fu
statement, showing the method of paying the sal
Members of the House and Delegates from the Fi
the present time.

Memorandum prepared from the books of receipts and expenditures, showing in what manner Members of the House of Representatives were paid their compensation and mileages, from 1789 to 1853, and in whose favor the warrants were drawn.

First Congress	By warrants drawn in favor of individuaal members.	
	Also by warrants drawn in favor of Frederick Augustus Muhlenberg, Speaker, to pay compensation and mileages due to members.	
Second Congress	By warrants drawn in favor of Johnathan Trumbull, Speaker, to pay compensation and mileages due to members.	
	By warrants drawn in favor of—	
Third Congress	Frederick Augustus Muhlenberg, Speaker.	
Fourth Congress	Jonathan Dayton, Speaker.	
Fifth Congress	Jonathan Dayton, Speaker.	
Sixth Congress	Theodore Sedgwick, Speaker.	
Seventh Congress	Nathaniel Macon, Speaker.	
Eighth Congress	Nathaniel Macon, Speaker.	
Ninth Congress	Nathaniel Macon, Speaker.	
Tenth Congress	Joseph B. Varnum, Speaker.	
Eleventh Congress	Joseph B. Varnum, Speaker.	
Twelfth Congress	Henry Clay, Speaker.	
Thirteenth Congress	Henry Clay, Speaker	First session.
Thirteenth Congress	Langdon Cheves, Speaker	First and second sessions.
Thirteenth Congress	Henry Clay, Speaker	Third session.
Fourteenth Congress	Henry Clay, Speaker.	
Fifteenth Congress	Henry Clay, Speaker.	
Sixteenth Congress	Henry Clay, Speaker	First session.
Sixteenth Congress	John W. Taylor, Speaker	Second session.
Seventeenth Congress	Philip P. Barbour, Speaker.	
Eighteenth Congress	Henry Clay, Speaker.	
Nineteenth Congress	John W. Taylor, Speaker.	
Twentieth Congress	Andrew Stevenson, Speaker.	
Twenty-first Congress	Andrew Stevenson, Speaker.	
Twenty-second Congress	Andrew Stevenson, Speaker.	
Twenty-third Congress	Andrew Stevenson, Speaker	First session.
Twenty-third Congress	John Bell, Speaker	First and second session.
Twenty-fourth Congress	James K. Polk, Speaker.	
Twenty-fifth Congress	James K. Polk, Speaker.	
Twenty-sixth Congress	Robert M. T. Hunter, Speaker.	
Twenty-sixth Congress	William Selden, Treasurer United States as agent for paying compensation and mileage of members.	
	By warrants drawn in favor of—	
Twenty-sixth Congress	Corcoran & Riggs assignees of sundry members.	
Twenty-sixth Congress	Sundry assignees of members.	
Twenty-sixth Congress	Sundry individual members.	
Twenty-seventh Congress	John White, Speaker, to pay compensation and mileage due to members.	
Twenty-eighth Congress	By warrants in favor of John W. Jones Speaker, to pay compensation and mileage due to members.	
Twenty-eighth Congress	By warrants in favor of the Bank of the Metropolis, to pay sundry orders of the Speaker in favor of members assigned to said bank, amounting to $285,939.62.	
Twenty-eighth Congress	By warrant in favor of George W. Jones, to pay order of the Speaker assigned to him, amounting to $1,164.20.	
Twenty-ninth Congress	By warrants drawn in favor of John W. Davis, Speaker, to pay compensation and mileage due to members; also to pay Corcoran & Riggs, assignees of sundry members, $290,224.60; to pay George W. Jones, per Speaker's order, $1,000; to pay Albert Constable, per Speaker's order, $54; and to pay Augustus C. Dodge, per Speaker's order, $16.	
Thirtieth Congress	By warrants in favor of Robert C. Winthrop, Speaker, to pay compensation and mileage due to members.	
Thirty-first Congress	By warrants in favor of Howell Cobb, Speaker, to pay compensation and mileage due to members.	
Thirty-second Congress	By warrants in favor of Linn Boyd, Speaker, to pay compensation and mileage due to members.	

NOTE.—From the first session of the Thirty-third Congress, beginning December 5, 1853, down to the present time, the warrants to pay compensation and mileage of members of the House of Representatives, have been drawn in favor of the Treasurer of the United States, and the moneys so advanced to pay compensation and mileage of members have been charged to the Treasurer of the United States on the books of the Treasury Department, and the accounts for pay and mileage of members have been settled in the name of the Treasurer.

[illegible] by the Treasurer of the United States, Ho
ary 24, 1854, and of the last settlement made b
United States, Hon. James N. Huston, Septem
of salaries and mileage of members of the House
are submitted to illustrate the system:

[No. 109516.]

TREASURY DEPARTMENT, FIRS

I have examined and adjusted the account between th
Boyd, Speaker of the House of Representatives of the Un
session of the Thirty-second Congress, agent for paying th
on account of their mileage and attendance, and find that
following sums, viz:

To amount of the following warrants drawn in his favor
United States, viz:
No. 8264, dated December 4, 1852.....
No. 8267, dated December 4, 1852.....
No. 8272, dated December 8, 1852.....
No. 8304, dated December 14, 1852.....
No. 8584, dated January 10, 1853.....
No. 8680, dated January 28, 1853.....
No. 8767, dated February 22, 1853.....

I also find that he is entitled to the following credits, viz:

By amount of his payments to the members of said House for t
and attendance at the second session of the Thirty-seco
commencing on the 6th day of December, 1852, and endin
of March, 1853, and also for arrearges due members for prev
as per Speaker's ledger and abstract.....
By amount of warrant No. 52, in favor the Treasurer, date
1853.....

As will appear from the statement and accounts herewitl
cision of the Comptroller of the Treasury thereon.

ELISHA WHITTLESEY, Esq.,
Comptroller of the Treasury.

[No. 113811.]

TREASURY DEPARTMENT, FIRST AUDITOR'S OFFICE,
February 24, 1854.

I have examined and adjusted an account between the United States and Samuel Casey, Treasurer of the United States, agent for paying the members of the House of Representatives on account of their mileage and attendance at the first session of Thirty-third Congress, and I find that he is chargeable with the following sums, viz:

To amount of the following warrants on the Treasurer of the United States, viz:	
No. 2055, dated December 6, 1853	$100,000.00
No. 2073, dated December 8, 1853	50,000.00
No. 2118, dated December 23, 1853	100,000.00
No. 2377, dated February 8, 1854	50,000.00
	300,000.00

I also find that he is entitled to the following credit, viz:

By amount of his payments to the members of the House of Representatives for their mileage and attendance at the first session of the Thirty-third Congress, from December 5 to December 31, 1853	129,541.86
And that the balance due the United States amounts to	170,458.14
	300,000.00

As will appear from the statement and account herewith transmitted for the decision of the Comptroller of the Treasury thereon.

T. L. SMITH,
Auditor.

ELISHA WHITTLESEY, Esq.,
Comptroller of the Treasury.

I admit and certify the foregoing balance this 27th day of February, 1854.

E. WHITTLESEY,
Comptroller.

[No. 271168.]

TREASURY DEPARTMENT, FIRST AUDITOR'S OFFICE,
September 7, 1889.

Recorded September 9, 1889.—K

I hereby certify that I have examined and adjusted an account between the United States and James N. Huston, United States Treasurer, for salaries and mileage of Members and Delegates, House of Representatives, from July 1, 1889, to August 31, 1889, inclusive, under official bond dated April 6, 1889, and find that he is chargeable, viz:

To warrants on the Treasurer, viz:	
No. 717, dated July 31, 1889	$138,785.25
No. 1349, dated August 31, 1889	137,522.00
Total	276,307.25

I also find that he is entitled to credit—

By amount of his disbursements in July and August, 1889	$276,307.25

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

GEORGE P. FISHER,
First Auditor.

The FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balanced account this 18th day of September, 1889.

A. C. MATTHEWS,
Comptroller.
By J. R. GARRISON,
Deputy Comptroller.

The REGISTER OF THE TREASURY.

From these official statements it appears that down to and including the Thirty-second Congress the Speaker of the House was generally the agent for paying to the members of the House their salaries and mileage, and that since then the Treasurer of the United States has been the disbursing officer for the payment of moneys appropriated for that purpose. In the statement of February 24, 1854, the Treasurer of the United States is called "the agent for paying," etc.; in the statement for September 7, 1889, the settlement is made directly with the Treasurer of the United States as such officer.

It is obvious that the Sergeant-at-Arms of the House has had no official relations with the Treasury Department; that no account has ever been opened with him at the Treasury. A practice has long existed of members signing in blank a receipt in the following form.

Salary, 1889 .....

No. ——. HOUSE OF REPRESENTATIVES OF THE U. S.

WASHINGTON, ..., 1889.

I certify that there is due to the Hon. .....

FOUR HUNDRED AND ——DOLLARS, as a member of the House of Representatives for the Fifty-first Congress.

....., *Speaker.*

$41—.

Received payment.....

This paper when filled up and signed by the Speaker of the House during the session, or by the Clerk in vacation, is made by law a conclusive voucher for the amount named.

The Revised Statutes contain the following provisions giving special effect to such vouchers:

SEC. 46. The compensation of Members and Delegates shall be passed as public accounts and paid out of the public Treasury.

SEC. 47. The salary and accounts for traveling expenses in going to and returning from Congress of Senators shall be certified by the President of the Senate, and those of Representatives and Delegates by the Speaker of the House of Representatives.

SEC. 48. The certificates given pursuant to the preceding section shall be *conclusive* upon all Departments and officers of the Government.

Section 38 of the Revised Statutes authorizes the Clerk of the House to sign these "conclusive" certificates in vacation of Congress.

This system of collecting the salaries of Members and Delegates was a convenience, the Sergeant-at-Arms holding the certified accounts of Members and Delegates duly receipted by them presented them at the Treasury, and of course under the law received the money from the Treasurer of the United States without question, and the result was the office of Sergeant-at-Arms became a banking institution with a cashier, bookkeeper, paying clerk, deputy sergeant-at-arms, all with high salaries, and a messenger. But, however convenient while honestly conducted, the attention of the House had been called years ago to the peril it involved.

In the Forty-sixth Congress, when the rules of the House were under consideration, Hon. Jeptha D. New, a member from Indiana, moved an amendment to the fourth rule of the House to increase the responsibilities of the Sergeant-at-Arms. General Garfield spoke as follows:

Mr. GARFIELD. I move to strike out the last five words of the clause, for the purpose of making a suggestion, which I rose to make at the time the gentleman from Indiana [Mr. New] obtained the floor and offered his amendment. The sum of my suggestion is that we informally pass over this clause of the rule, let the amendments remain pending, and have printed a letter which I hold in my hand in order that members may all see it, and that the Committee on Rules may have time, as I think they ought to have, to draft an amendment which will cover the case suggested in this letter.

It is a letter which was sent to me some time ago, and but for my absence from the city I should have submitted it to the Committee on Rules as I ought to have done. I ask the indulgence of the committee while I state its substance.

Twice the Treasurer of the United States has in his official report, not only the present Treasurer but the late Treasurer, suggested that there was an anomaly in our mode of keeping accounts of moneys in the hands of the Sergeant-at-Arms. Let me point out that anomaly.

If we should adjourn on the 1st day of June next, before we go from this city each and every member of this House will give to the Sergeant-at-Arms what in fact will be a receipt for five months' pay ahead; really and technically acknowledging that he has received that pay In the aggregate those receipts for this entire House will amount to about $600,000. The Sergeant-at-Arms therefore will hold in his hands, when we leave here, receipts from Members and Delegates of this House to an aggregate of almost three-fourths of a million of dollars. With those receipts he goes to the Treasury of the United States and draws funds in a lump, large amounts at a time.

Mr. FRYE. Only monthly.

Mr. GARFIELD. Monthly, it is true; but he draws in a lump for all the Members and Delegates of this House for that month. He draws the full amount when not one of us has actually received a dollar.

Now, the Sergeant-at-Arms of this House is not a disbursing officer of the United States. He is only our agent, and if he should be robbed of or should make away with the money in his possession, we as members would have no recourse whatever, for the Treasurer of the United States holds our receipts. The only way in the world that we could have any recourse at all would be by getting Congress to appropriate enough money to pay us over again what we already had put into the hands of our agent, and what our agent had either lost or stolen.

The Treasurer says in this letter that this practice has led to innummerable difficulties. Sometimes when this warrant has been drawn and the money paid, it turns out that a member of the House was not entitled to all the amount of the certificate for some reason or other. He tells me in this letter that there are still sums due to the Treasury of the United States for overdrafts in the Thirty-ninth Congress, small amounts which the Treasury has never been able to collect, amounts which members of Congress have overdrawn and have never repaid. The Treasurer in this letter suggests that we might follow the rule adopted in the Senate and make one of our officers—in this case it would be the Sergeant-at-Arms—a disbursing officer of the United States, who would give his bond to the Treasury as other disbursing officers do, and thus would be made directly accountable to the accounting officers of the Treasury, rather than be held responsible merely upon a bond gotten up under our own rules.

It occurs to me that in this way we may avoid all the trouble (and the difficulty is a real one) suggested by my friend from Indiana [Mr. New], and at the same time do away with this rather dangerous and loose way of doing business.

I ask that the letter to which I have referred be printed in the Record for the information of members; and I also ask that, with the amendment of the gentleman from Indiana pending, this portion of the rules be informally passed over with the right to return to it when the Committee on Rules shall have examined the question in the light of the facts and shall have presented, perhaps, an amendment which may cover the case in the direction I have suggested.

Mr. BLACKBURN. I wish to ask the gentleman whether the practice of which he complains is the execution of receipts in advance by members for their pay for months intervening between the close of one session and the beginning of another?

Mr. GARFIELD. That is a part of what I refer to. But a similar practice exists even while Congress is in session. I presume that two weeks ago the Speaker drew his formal warrant for our pay and that most of us signed receipts in advance for our pay for the current month. The Sergeant-at-Arms presents those receipts to the Treasury of the United States as his vouchers, and upon them draws out $416 for each receipt presented. The money thus drawn out is the money of the member. If the Sergeant-at-Arms should run away with it or should lose it the real loss would be upon us, for he is only our agent; he is not a regular bonded disbursing officer of the Treasury. When an employé of the Treasury or any other Department draws his money he draws it from a regular bonded disbursing officer; and if this officer loses the money before paying it to the employé it is the loss of the Treasury or of the disbursing officer, not of the employé for whom it is drawn.

Such payments are now made upon the certi
Clerk of the House when there is no Speaker) that th
payment. These certificates, receipted by the member
are presented to the Treasurer by the Sergeant-at-Arm
of as the agent of the members, and accounting to the
ner as they may require. It thus frequently happens
in his possession large sums belonging to members and

The amount of the Treasury warrant issued each mo
for the payments of the month is charged to him upon
he obtains credit to offset such charge upon filing with
partment the Speaker's certificates, if they are found
at various times that the auditing officer, having found
amounts due to members as expressed in the certificat
the full amount paid by the Treasurer, who has been
obtain repayment of the money so overpaid, and has
For instance, there are at this time held suspended ag
his debit on the books of the Register, a small amount
two members of the Thirty-ninth Congress, the term of
suspension has continued to this date, notwithstanding
amounts certified by the Speaker to be due, and the act o
that these certificates shall be conclusive upon all the
the Government, the First Comptroller holding that thi
certificates drawn in conformity to law.

The law requiring that these certificates be paid out
passed as public accounts does not require that they shal
by the proper auditing officer; and, but for the delay
occasion members, the certificates should be submitted
payment. To avoid such delay and complications in th
dation heretofore made is hereby renewed—that one of
Representatives be designated as a disbursing officer, giv
quired, in the same manner as the Secretary of the Sen
disbursement and mileage of Senators.

I believe that formerly members of the House of Rep
officer of the House, but under what circumstances the
am not informed.

Hon. JAMES A. GARFIELD,
Select Committee on Rules, House of Representatives,
Washington, D.

Upon a suggestion of Hon. Samuel J. Rand
House, that to reach the object aimed at legisl
proposition to amend the rule was abandoned,
ments in the House to secure the necessary l
nated without any legislation

STATEMENT OF J. W. WHELPLEY, ASSISTANT TREASURER OF THE UNITED STATES.

By the CHAIRMAN:

Q. Will you please state for the benefit of the committee what difference there is in the mode of payment of the salaries of Senators and Members of the House, giving the system of book-keeping connected therewith, and the manner in which the payments are made?

Mr. WHELPLEY. In the case of the Senate, section 56 of the Revised Statutes makes the Secretary of the Senate a disbursing officer. The moneys which may be appropriated for the compensation of Senators and officers and for the contingent expenses of the Senate are usually paid in drafts. That money is placed to the credit of the Secretary of the Senate on the books of the Treasury, and he draws his check for it. He is required to account for that money; and he furnishes the certificate of the President of the Senate that a Senator is entitled to so much pay, and he takes the Senator's receipt and puts it in his account to the First Auditor.

In the case of the House the Speaker of the House certifies that there is due to a certain member, say for the month of November, $417, and the member receipts on that certificate, right under the signature of the Speaker, or that of the Clerk when there is no Speaker, under the printed words "received payment." That certificate comes to the Treasury in the custody of an officer from the office of the Sergeant-at-Arms. The cashier usually brings it, but occasionally a messenger. We accept it through the Sergeant-at-Arms, and it is charged up on the books as the pay and mileage of members for such a session. At the end of every month we write a letter to the Secretary of the Treasury stating that we have disbursed so much money for the pay and mileage of members of Congress and ask to be re-imbursed. The Secretary issues a warrant on the Treasurer for this amount. The Treasurer draws a draft on himself, signed by himself, and places it to the credit of that account to settle for these vouchers. Then that warrant is charged to the Treasurer on the Register's books and is turned over to the accounting officers.

Q. How much of that proceeding is prescribed by positive statute?—A. There is nothing except the statute that makes the Treasurer of the United States a disbursing officer of the Government. If you take the book of appropriations you will find that every year there is a certain amount appropriated for the pay of members, and out of that appropriation this money is advanced to the Treasurer.

Q. There is a similar appropriation made for the pay of the Clerk's office?—A. The Clerk of the House is a disbursing officer.

Q. There is no statute designating any particular officer as the disbursing officer for members?—A. Nothing.

Mr. HEMPHILL. Do they keep a separate account in the Treasury with each member?

Mr. WHELPLEY. Yes, sir; I have a book which shows exactly the amount of the certificate for the pay of every member and the date of the certificate.

The CHAIRMAN. Have you a statement showing how many members have filed their certificates for the month of November?

Mr. WHELPLEY. We have that at the Treasury. A clerk is writing up the individual accounts and will be ready soon with a statement showing exactly the state of every member's account, so far as the Treasury is concerned. The names of the members are arranged alphabetically. Say Mr. Adams's certificate comes in for the month of November, under November we would simply make an entry showing that we have paid Mr. Adams for that month. When the Sergeant-at-Arms sends down a certificate we do not pay him until we have seen whether or not Mr. Adams has drawn his salary for that month.

Mr. STEWART. Suppose a member should present his certificate himself at the Treasury, would you pay it?

Mr. WHELPLEY. Most assuredly we would. When there was a little trouble here in 1881 about the Sergeant-at-Arms, a rumor being afloat that his accounts were short, stoppages of these certificates were sent to the Treasury in a number of cases and there was considerable correspondence with members about it. Mr. Willis, a member of Congress from Kentucky, would not allow the Sergeant-at-Arms to draw his money. He sent his certificate through the bank. We had an order also from Mr. Aldrich to stop payment. If the certificates are properly presented it is not absolutely necessary they should come through the Sergeant-at-Arms. All the Treasury wants to know when a member gets his pay is whether he has authorized the money to be paid to the party who presents the certificate.

Mr. HEMPHILL. But the Treasury would not pay it except on the certificate of the Speaker or the Clerk?

Mr. WHELPLEY. The Treasury would not pay the member unless the voucher complied with the statute, that is that the Speaker certifies that there is such an amount due him. We would want the certificate of the Speaker.

Mr. REED. The member can not draw this money in advance?

Mr. WHELPLEY. They can not.

... of the certificate.

The nature of the relation of the Serge
mileage of Members and Delegates of th
has frequently been considered in the H
March, 1838, Mr. W. C. Johnson made a re
Accounts in relation to the employés of
exceedingly interesting as a statement of
with the House of Representatives from th
The relations of the Sergeant-at Arms to th
is considered, and the service he rendered
almost from the organization of Congress,
the warrants for the compensation of Memb
the Speaker, is fully considered. It seems
Sergeant-atArms was not required by eve
execute a bond; the Speaker of the House
bers. The report, in referring to the undefin
relations of the Sergeant-at-Arms to the mo
says:

A due regard, therefore, for the public interests w
proper and usual precautions to save the public harml
as in other cases of disbursement of public money.

The committee, therefore, think that the Sergeant-a
to enter into bonds with surety, to be approved by t
Clerk, faithfully to account for the money coming into
Members.

These remarks were made in view of the de
at-Arms in June, 1832, for some $8,000, the
the House up to that now under considerati
good to the Members whose money was embezzl
out of the contingent fund, probably for the r
the House was responsible for the safety of t
the compensation of Members.

On the 4th day of April, 1838, the House, a
Committee on Accounts, adopted the followin

Resolved, That it shall be the duty of the Sergeant-a
pay and mileage of the Members of the House, to pre
if required to do so, to draw the money on such checks
ing previously signed by the Speaker and indorsed b
the same may be drawn, and pay over the same

the same relation to the payment of Members, when the fund for their payment was under the control of the Speaker of the House, as now when the fund is under the control of the Treasurer of the United States, that is he was then as now, the agent of the Members in the collection of the money due them on *certified accounts*. It will be remembered also that at that time the compensation of Members was only paid during the sessions of Congress.

It appears from the report above mentioned that during the long period that the Speaker of the House was the medium through which the Members were paid, the Doorkeeper was some times the officer who cashed the checks of Members. The report says:

"It has not always been the case, however, that the Sergeant-at-Arms was the officer who cashed, at bank, the checks for the payment of the members. During the sergeancy of the first Sergeant, Joseph Wheaton, the checks were filled and perfected by him, and the Assistant Doorkeeper took them to the bank and returned the money to the Members. This course was followed during the sergeancy of the elder Dunn, who succeeded Mr. Wheaton. This officer died in 1824, and was succeeded in the office of sergeant by his son, John Oswald Dunn. A different arrangement was thus made, the Speaker, in accordance with the ancient practice of Parliament and with the rule of the House, directed the Sergeant to be seated at his right alongside his mace, the insignia of his office and of the authority of the House. The Assistant Doorkeeper was then called upon by the Speaker to assist in the duties of paying." This continued several years, and then the Sergeant-at Arms was again called upon to assist the Speaker.

The last action of the House in relation to the Sergeant-at-Arms occurred on the 16th day of June, 1882 (First session Forty-seventh Congress); on that day Hon. George D. Robinson, of Massachusetts, asked unanimous consent for the consideration of a bill of the following title:

A bill making the Sergeant-at-Arms of the House of Representatives a disbursing officer and for other purposes.

The first section of that bill was as follows:

Be it enacted, etc., That the moneys which may be appropriated for the compensation and mileage of Representatives and Delegates shall be paid at the Treasury on requisitions drawn by the Sergeant-at-Arms of the House of Representatives, and shall be kept, disbursed, and accounted for by him according to law; and the said Sergeant-at-Arms shall be deemed a disbursing officer, but he shall not be entitled to any compensation additional to the salary now fixed by law.

The second section of the bill required the Sergeant-at-Arms to execute a bond with security to the approval of the First Comptroller of the Treasury in a penalty of $50,000, which bond should be filed in the office of the First Comptroller. After a short debate the bill was passed by unanimous consent. In the Senate it was referred to the Committee on Appropriations, and does not appear to have been considered.

If that bill had become law, the embarrassment now confronting the House could not have occurred.

It has been suggested that section 40 of the Revised Statutes directing the Secretary of the Senate and the Sergeant-at-Arms of the House to make deduction from the pay of Senators, Members of the House, and Delegates on account of absence, seems to recognize the Sergeant-at-Arms of the House as a disbursing officer. That provision would of course be consistent with a law if one existed that made him a disbursing officer, but it does not of itself make him a disbursing officer or surround the funds received by him for Members and Delegates from the Treasurer of the United States, with any of the safeguards incident to the public funds in the hands of a disbursing officer of the United

States. The same is true of the act of June 22, 1882, which, it is understood, was enacted on account of the temporary inability of the Secretary of the Senate to perform his duties as a disbursing officer.

It has also been suggested that section 3477 of the Revised Statutes, in relation to the assignment of claims against the United States, repels the view that the Sergeant-at-Arms of the House was acting as the agent of the Members and Delegates in receiving the money due them for salary and mileage; but that section obviously refers to private claims against the United States, perhaps to prevent champerty, and not to certified accounts made by law "conclusive" and duly receipted.

It has also been suggested that, if the Sergeant-at-Arms was only the agent of the Members and Delegates of the House in receiving their money from the Treasury, the Treasurer of the United States was not authorized to pay him the money until it became due; that the salary of Members and Delegates for November, 1889, was not due until the 4th of December, 1889, when in fact the money was paid to the cashier of the Sergeant-at Arms on the 27th, 29th and 30th of November, 1889. But the payment a few days in advance, while in no wise injurious to the United States, was manifestly intended for the benefit of the Members and Delegates, and surely the officers of the Treasury could not under these circumstances be charged with negligence in a public duty in paying money on a "conclusive" voucher duly receipted, a voucher declared by law to be "conclusive."

Upon the law and facts stated the undersigned is forced to the conclusion, reluctantly differing with the able gentlemen who constitute the majority of the committee, that the Sergeant-at-Arms of the House is not and never has been a disbursing officer of the United States, *that the money embezzled was not at the time under any one of the safeguards provided by law for the protection of public funds in the hands of a disbursing officer of the United States*, that in fact and in law the Treasurer of the United States is the disbursing officer of the fund for the payment of the salaries and mileage of the Members and Delegates of the House, and he having paid the money involved in this inquiry to the Sergeant-at-Arms on the certified accounts of the Members and Delegates, duly receipted by them, no responsibility rests upon the officers of the Treasury Department, and that the fund embezzled was the money of the Members and Delegates, and not funds of the United States in the hands of a disbursing officer.

It may be said that if this view is correct the House has nothing to do with the matter; that the gentlemen whose funds were in the hands of the Sergeant-at-Arms are alone interested in the disposition to be made of the remaining fund of $83,408.47, and that conclusion is probably correct; but if any action is taken on the subject by the House the undersigned respectfully submits that as it does not appear from the evidence that any of the funds placed in the custody of the late Sergeant-at-Arms, were made special deposits, that the money received by him, whether it was placed by him in the bank or in the safe in his office, should be considered a common fund, and in equity the rights of Members and Delegates to the moneys received for them by him from the Treasury of the United States or deposited with him by them and not embezzled ought to stand on the same footing, and the fund ought to be divided pro rata among the Members and Delegates interested therein on the basis of the respective sums involved.

Very respectfully submitted. WM. S. HOLMAN.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 6.

TO SIMPLIFY THE LAWS IN RELATION TO THE COLLECTION OF THE REVENUES.

JANUARY 14, 1890.—Recommitted to the Committee on Ways and Means and ordered to be printed.

Mr. McKINLEY, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 4970.]

The object of this bill is to simplify the methods of business at the custom-houses, to obtain uniformity in appraisements and in the assessment of rates of duty, to prevent frauds and to secure a thorough and impartial enforcement of the customs and tariff laws.

In one form or another legislation to meet these ends has been urged by successive Secretaries of the Treasury and by the business interests of the country for years, and numerous bills have been introduced with that general purpose in view. The fact that, as a rule, these measures were connected with propositions directly affecting the tariff schedules, alone prevented action and caused their defeat.

For this reason it has been deemed advisable to submit this administrative measure apart from any provisions affecting rates of duty which might be the subject of political differences.

The evils sought to be corrected, to use the language of the Secretary of the Treasury in his recent annual report, "are subversive of commercial and official morality, destructive of legitimate trade, and appeal to the judgment of all fair-minded men for correction."

Section 1. This section is taken from the act of February 28, 1887, and is changed only by the substitution of the words "*indorsed by the consignor*" for the words "*properly indorsed.*" This change removes doubt as to what constitutes a proper indorsement of a bill of lading consigned to order, and was suggested by customs officers who meet questions of this character in daily practice.

Section 2. This section is a consolidation of sections 2838 and 2853 of the Revised Statutes, with the following modifications:

(1) That invoices shall be made out in the currency actually paid therefor, and also in the currency of the place or country from whence the importation shall be made.

(2) That they shall contain a correct description of the merchandise.

(3) That they shall be made in quadruplicate when the merchandise is destined for immediate transportation without appraisement.

It is desirable and necessary that an invoice shall in all cases state the actual transaction as it occurred between the buyer and seller. Under the present law the invoice must be made out in the currency of the country where the merchandise was procured or purchased, although some other currency may have been actually used, as is frequently the case. Shippers sometimes find it to their advantage in a country having a depreciated currency, to have their invoices made out

in that currency rather than the current money of another country actually paid. In such a case the invoice is not a truthful statement of the transaction. It also often occurs that invoices are presented at our custom-houses made out in the currency actually paid, which is not that of the country where the merchandise was purchased. This, under the present law, would not be a legal invoice, and causes inconvenience and trouble to all parties concerned.

There is no specific requirement of the present law that the invoice shall furnish an accurate description of the merchandise, although such is probably the intention of the statute. Such a description is, however, essential to enable the customs officers to estimate the duties on entry, and to hold the consignor accountable for any misstatement which may be made in the invoice for the purpose of evading the revenue. It is as necessary that the invoice shall particularly describe the merchandise as that it shall state its value, inasmuch as only one package in ten is, as a rule, opened and examined by the appraising officers.

Section 3. This is a substitute for Section 2854 Revised Statutes, and changes the existing law in the following material respects:

(1) That the invoice shall be authenticated by the consular officer of the district from which the merchandise is exported, instead of the consular officer nearest the place of shipment. This for the reason that the first named officer is presumed to be better informed of the value of the merchandise shipped than an officer in the district where the goods might happen to be placed on shipboard for the United States.

(2) That the declaration of the shipper made before the consul as to value, etc., shall apply to all merchandise whether subject to ad valorem duties or otherwise, this requirement being limited by the present law to goods subject to ad valorem duty. It is incompetent for either the shipper or the consular officer to determine the rate of duty to which the goods shall be subject, or whether or not they are free of duty, as the question of classification can only be decided by the customs officer after entry and examination of the merchandise.

(3) That the invoice shall name the person from whom the merchandise was purchased, the purpose being to afford the means of verifying the correctness of the invoice if necessary, and of tracing the transaction in cases of supposed or ascertained frauds.

(4) That in cases where the merchandise is obtained otherwise than by purchase the invoice shall set forth the actual market value or wholesale price at the time of exportation in the principal markets of the country from whence exported, instead of "the time and place, when and where the same was procured or manufactured," as is now the law.

This change is necessary to harmonize the statement made by the shipper in his declaration to the invoice, with that required to be made by the consignee on entry, as well as to the rule prescribing what shall constitute market value on appraisement.

Secretary Manning, in his report of February 16, 1886, on the revision of the tariff (pp. 25 and 26), suggested the need of this change in the existing law. Secretary Windom also in his recent annual report urges the imperative need of such a change.

(5) That the market value stated shall be the price at which the merchandise is freely offered for sale to all purchasers in said market, and is the price which the manufacturer or owner making the declaration would have received and was willing to receive for such merchandise sold in the ordinary course of trade and in the usual wholesale quantities. This definition of market value accords substantially with the decisions of the courts on the subject. (1 Benedict, 241; 2 Benedict,

249; 3 Benedict, 537; 3 Wallace, 114.) It is considered important that this definition of market value as made by the courts shall be embodied in the statutory law so that there may be no excuse for persons invoicing goods to this country or to our appraising officers of a lack of knowledge on the subject.

Section 4. This section is intended to supersede sections 9, 10, and 11 of the act of June 22, 1874, known as the anti-moiety act, and modifies those sections in the following essential particulars:

(1) That the affidavit required (section 9) shall be taken before the collector or his deputy rather than before "any officer authorized to administer oaths." Inasmuch as the succeeding sections (10 and 11) require that the oath upon pro forma entry shall be made before the collector or his deputy, it is important that the affidavit upon which the proceeding is based should be made before the same officer. This is necessary in order that the collector may interrogate him concerning his knowledge of the facts and as to the reasons why he can not produce a certified invoice.

(2) That no merchandise shall be admitted to entry on pro forma invoice unless the collector shall be satisfied that the failure to produce a duly certified invoice was due to causes beyond the control of the consignee. The object of this change is to enable the collector to reject applications for permission to enter merchandise upon pro forma invoice unless satisfactory reasons are shown. Under the present law collectors do not feel authorized to refuse such applications when accompanied simply by the affidavit prescribed by the present law.

(3) That when merchandise exceeding $100 in value is entered by pro forma invoice a bond shall be required for the production of a duly certified invoice.

This has been the practice under regulations of the Treasury Department based upon a statute existing prior to the enactment of the act of 1874, but doubts having arisen as to whether it applies to entry on pro forma invoice, it is thought advisable to set these doubts at rest by inserting this provision.

The attention of Congress was called to the evils attendant upon entries by a pro forma invoice by Secretary Manning at various times, particularly in his report on the revision of the tariff of February 16, 1886, (p. 31, *et seq.*) wherein he repeatedly urged the repeal of the obnoxious sections of the act of 1874. Secretary Fairchild also in his annual reports for 1887 and 1888 urged upon Congress the necessity for a change of existing laws on this subject; and a similar recommendation was made by Secretary Windom in his recent annual report.

Section 5. This section is a substitute for section 8 of the act of March 3, 1883, which was based upon section 2841, Revised Statutes. The changes consist—

(1) In the substitution of declarations, which may be made before the collector or a notary public or other officer authorized to administer oaths to be designated by the Secretary of the Treasury, in place of the oath which must now be taken before the collector at the customhouse in all cases. This requirement causes great inconvenience to merchants in the larger cities, especially in New York, and has been a subject of complaint for many years. The change will afford relief in this regard and will not prejudice the interests of the Government.

(2) In harmonizing the declaration with the other features of the bill respecting dutiable value of merchandise, particularly as described in section 8 of the bill.

(3) The form of declaration is also changed so as to require the im-

porter, consignee, or owner, as the case may be, to declare affirmatively his precise relation to the importation.

Except as modified in regard to market value this section is the same substantially as was embodied in the Hewitt bill introduced in the Forty-eighth Congress, which was revised and amended by Secretary Fairchild, so as to conform to his views.

This section is also practically the same as section 7 of the Mills tariff bill passed by the House during the last Congress.

Secretary Windom in his annual report says:

> Complaint is justly made by importers in the matter of custom-house oaths. They are compelled to take these oaths before the collector at much personal inconvenience. A declaration sanctioned by penalties, attested by any officer duly authorized to administer oaths, would afford relief, and such change is recommended.

Section 6. This section provides suitable penalties for false declarations on entry prescribed by the preceding section, and is found in the Hewitt and Mills bills.

Section 7 is a modification of section 2900 Revised Statutes, which provides that when merchandise is advanced upon appraisement 10 per cent. or over, an additional duty of 20 per cent. shall be levied thereon. The changes in this law are as follows:

(1) The right to make additions upon entry is limited to merchandise obtained by actual purchase. Such additions may be made under the present law upon any invoice whether the merchandise was obtained by actual purchase or otherwise. The reason such right is given to actual purchasers is because the merchandise may advance in value during the period between the time of purchase and exportation. The purchaser being required by law to state in his invoice the actual cost of the merchandise, and the dutiable value being the actual market value at the time of exportation, it is right that he be permitted to make such additions on entry as in his opinion may be necessary to bring the price up to such market value in order that he may not incur a penalty for undervaluation. But this does not apply to goods consigned to the United States for sale on account of a foreign owner, because the owner or shipper has knowledge of the market value at the time of exportation and should be held and bound by the statement in his invoice in respect thereto.

It has long been the practice of the foreign shipper of consigned goods to invoice the merchandise regardless of the foreign market value, and to depend upon his agent in the United States to make such addition only as he might deem necessary in order to evade the 20 per cent. penalty. This has come to be one of the great abuses of our customs system.

(2) It is provided also that the 20 per cent. additional duty shall apply to merchandise entered upon pro forma invoice as well as upon duly certified invoice. This is to meet a construction of the law by the Attorney-General to the effect that the 20 per cent. penalty does not apply to goods entered by a pro forma invoice, and which has resulted in the extensive use of such invoices of the unscrupulous to undervalue the merchandise without incurring any risk.

(3) Where the appraised value exceeds the entered value more than 20 per cent. it is provided that the entry may be regarded as presumptively fraudulent, and proceedings may be brought for condemnation, the burden of proof to show innocence of fraud being thrown upon the importer. This is practically a revival of section 909, Revised Statutes, repealed by the sixteenth section of the act of June 23, 1874, which compels the Government to prove affirmatively in suits for forfeiture

the fraudulent *intent* of the importer, and has thus made it practically impossible to secure forfeiture even in the most flagrant cases of undervaluation. In fact the section referred to deprives the Government of the ability to protect its revenues or to do justice to honest importers.

Ordinarily it is fair to assume that an undervaluation of 20 per cent. or more would not result from mere ignorance or negligence and would therefore carry with it a presumption of intent to defraud the revenue.

(4) It is also provided that the additional duty or penalty shall apply only to the particular article in the invoice found to be undervalued.

Secretary Folger, in a communication to the President, which was transmitted to Congress April 1, 1884 (Ex. Doc. 128, Forty-eighth Congress, first session), on the subject of undervaluations, strongly advocated the repeal of the sixteenth section of the act of 1874 and the restoration of the rule prescribed by section 909, Revised Statutes, placing the burden of proof in customs forfeiture cases upon the claimant. He said:

> Responsibility for a correct valuation should be placed upon the consignee who makes entry, and the fact that the invoice and entry are false should be deemed presumptive evidence of fraudulent intent, subjecting the goods to forfeiture unless innocence can be shown. So long as the ad valorem system exists equality and uniformity in its administration can only be secured by providing adequate means to prevent undervaluation. Such means are not to be found in existing laws.

In a previous communication to the House under date of February 28, 1884 (Ex. Doc. 101, part 2, Forty-eighth Congress), Secretary Folger, referring to said sixteenth section, said:

> I am clear in my conviction that as long as the law referred to remains in force undervaluation will be perpetrated with impunity.

Section 8 is new, and is intended to furnish appraising officers with additional means of ascertaining the value of goods consigned for sale on foreign account, in the appraisement of which the customs officers find the greatest difficulty. It is believed that this section, together with other provisions of the bill, will tend to discourage undervaluations.

Section 9 is intended to take the place of section 12 of the anti-moiety act of June 22, 1874, which is held by the courts to have repealed the provisions of section 2864, Revised Statutes. The last named section provided that in case of fraudulent entry not only the merchandise but its value shall be forfeited. Section 12 of the act of 1874, however, provides for the forfeiture of the merchandise only, so that if the importer succeeds in getting his goods through the custom-house and they have passed into consumption, or beyond identification, he may escape penalty since the goods only are subject to forfeiture under existing law. This leaves the Government without a remedy, no matter how flagrant the fraud may be. The purpose of this section is, therefore, to cure this defect by inserting the words "or the value thereof," so as to enable the Government to recover the value of merchandise fraudulently imported which has passed into consumption. This section is practically identical with one embodied in the Hewitt bill and in the Mills bill, and was approved by Secretary Fairchild, by whom it was originally suggested.

Section 10. This section is reproduced from section 2902, Revised Statutes, and defines the duties of appraisers. The only change is the insertion of the words "or statement of cost or cost of production" to harmonize the section with other provisions of the bill. The proviso in section 2902, relating to wool, is inoperative because inconsistent with the tariff act of March 3, 1883, and is therefore omitted.

Section 11 is a substitute for section 9 of the tariff act of 1883. It defines more clearly the elements of cost to be ascertained by the appraiser when it is found impracticable otherwise to appraise the market value of the merchandise to their satisfaction. This seems necessary on account of the consignment for sale in our markets of merchandise claimed or appearing to have no market value in the country of production, being purposely made for this market and differing in some respects from goods of the same general class ordinarily sold in a foreign market.

Section 12 provides for the appointment of nine general appraisers in lieu of four general appraisers appointed under the provisions of section 2608, Revised Statutes. The purpose is to do away with the unsatisfactory system long prevailing under which importers participate in re-appraisements and in many cases nullify the efforts of the Government officers to collect the duties on foreign merchandise contemplated by law.

The irregularities and abuses incident to the existing method of re-appraisement were the subject of a vigorous letter from Secretary Manning to the general appraiser at New York, under date of June 9, 1885 (Report on the collection of duties, 1885, p. 98). In his report on the revision of the tariff for 1886 (pp. 37 to 38), Mr. Manning recommended that the merchant appraisment system be abolished so far as the port of New York was concerned, and that the duty of deciding appeals be devolved upon three general appraisers whose decision should be final and conclusive. The principle thus suggested has been adopted in this bill, which, however, provides a uniform system for the whole country and is in harmony with the recommendation of Secretary Fairchild in his annual report for 1888, wherein he advised—

> The amendment of the laws relating to appraisement, so as to provide for a more efficient supervision of the work of local appraising officers, by increasing the number of general appraisers, enlarging their powers, and conferring upon them exclusive appellate jurisdiction in questions of value.

Secretary Windom, in his recent annual report referring to the same subject, said:

> The system of appointing merchants to act as members of re-appraising boards, although it may have worked satisfactorily in former years when the volume of importations was comparatively small, and importers owned the goods imported, and when disputes as to value were rare, has become, under present conditions, not only ineffective but productive of serious abuses, scandal, and contention, and is injurious alike to the revenue and legitimate trade. The remedy generally suggested, and which appears to have met the approval of reputable merchants throughout the country, is an increase in the number and an enlargement of the functions of general appraisers so as to devolve upon those officers the sole duty of hearing and disposing of appeals from original appraisements. I am of the opinion that such legislation is imperatively needed.

By reference to the appendix to Secretary Windom's report it will be seen that the plan proposed has the indorsement of experienced customs officers at the principal ports. It has also the approval of reputable merchants generally throughout the country.

Section 13 is a substitute for sections 2929 and 2930, Revised Statutes. The essential change, as is more fully discussed in reference to section 12, is the provision that hereafter all appellate re-appraisement boards shall be constituted solely by Government officers, without the interposition of merchants in any case.

Sections 14 and 15. These sections are substituted for sections 2931 and 2932, Revised Statutes, and are in substance the same as were contained in the bill familiarly known as the "undervaluations bill"

which passed the Senate at the first session of the Fiftieth Congress, after a full discussion and practically without division. The Senate Committee having the bill in charge reported as follows with respect to these two sections:

It will be seen that the proposed sections are a radical departure from the existing law. They substitute for the decision of the Secretary of the Treasury, in all cases of appeal upon questions of classification and rate of duty and upon questions as to fees, charges, and exactions, the decision of the board of appraisers provided for in the preceding section, and confer upon said board in the first instance exclusive jurisdiction of all said questions. They confer upon the several circuit courts of the United States appellate jurisdiction upon all questions of law as respects classification and rate of duty, with a final determination by the Supreme Court of the United States in difficult cases, or in cases where the Attorney-General shall be of opinion that the matter in controversy should be appealed thereto.

The intent and purpose of these two sections is to afford the importer and the Government a speedy decision upon every question of law and fact that can arise as respects the proper classification of merchandise and the rate of duty to be charged thereon. It is believed that these two sections together will render substantial justice to the importer and to the Government.

Previous to 1839 a person paying duties claimed by him to have been illegally exacted had a common-law right of action against the collector to whom the payment had been made, provided the person making such payment gave notice at the time of payment that the duties charged were too high, and that the party paying so paid in order to secure possession of his merchandise, and that he intended to sue to recover back the amount so erroneously paid, and provided that he also gave notice to the collector not to pay over the amount into the Treasury. Collectors of customs being thus personally liable, it was their practice to retain large sums of money in their possession on the ground that it had been paid under protest, and that they must indemnify themselves against liability. This evil of retention of moneys by collectors became so marked that by the second section of the act of March, 1839, all moneys were required to be paid into the Treasury.

It was held by the Supreme Court in the case of Carey *vs.* Curtis (3 Howard, page 236) that this act deprived the importer of all right of action in the courts for duty erroneously or illegally exacted from him. This decision of the court, therefore, left him no remedy but an appeal to the Secretary of the Treasury, who was authorized, whenever it was shown to his satisfaction in any case of unascertained duties, etc., to refund such overpayment. It thus being held that the importer was excluded by this act from commencing suit at common law, Congress, on the 26th of February, 1845 (vol. 5, Stat. at Large, page 727), provided that no thing in the act should be construed to take away or impair the right of any person or persons to maintain a suit at common law.

And this provision continued in force until June 30, 1864, when the sections, 2931 and 2932, were enacted, since which time importers have b en compelled to resort to the statutory remedy therein provided, and by said sections the common law remedy which existed up to that time was taken away. The amount of litigation which has grown up under this method of procedure is enormous, and it is constantly increasing, particularly at the port of New York. Over 4,000 suits are now pending in the United States circuit court for the southern district of New York alone, and the number is constantly augmenting, notwithstanding the appointment of an additional circuit judge about a year ago for the trial of these cases. The Secretary of the Treasury, in his last annual report. calls especial attention to this condition of affairs and says:

"The calendar of customs suits in the southern district of New York has grown so large that there is no reasonable prospect of disposing of them in this generation. A merchant who has suffered an illegal exaction of duties can not hope for a speedy trial of his cause, and justice is practically denied him. The laws which were ostensibly enacted to prevent fraud by undervaluation promote rather than suppress this evil."

It should be said that some of these suits were begun as early as 1858. It is impossible to compute the amount involved, so that the Government is menaced with unknown obligations amounting to many millions of dollars and always increasing. In addition to these suits there are more than 30,000 protests and appeals pending in the Treasury Department and in the New York custom-house dependent on this litigation.

It is believed that the proposed sections will afford claimants a speedy, just, and efficacious remedy. The tribunal in the first instance will be composed of officers selected with a view to their peculiar fitness and qualifications for the duties devolving upon them. Their time and attention will be given exclusively to a study of the tariff laws and to their practical application, and they could readily hear and dispose

of the cases as they might arise in an intelligent and satisfactory manner; but if they shall make a mistake as respects the true construction of the statutes relating to classification and rate of duty, a speedy and efficacious remedy is provided for a review of their decision as respects the law of the case, their finding of facts being conclusive upon the Government and the importer.

Under the present system all questions of classification and rate of duty are submitted to the Secretary of the Treasury upon appeal from the decision of the collector when the importer is dissatisfied with such decision. It is manifestly impossible for the Secretary of the Treasury, or for any assistant secretary of the Treasury, to give personal detailed consideration to these appeals, except in rare and important cases; therefore from necessity there has grown up in the Treasury Department a bureau or division of the Secretary's office which examines all these cases, and consequently in practice most of them are made up and decided by a chief of division in the Treasury Department, his decision, of course, being reviewed, but generally in a perfunctory way, either by the Secretary himself or by one of the assistant secretaries.

In the opinion of the committee, a board such as is provided for by the sections under consideration, sitting at the place of importation, and having easy access to all the facts and circumstances surrounding the case, including a view of the merchandise, could give much more intelligent consideration to the questions involved than could subordinates in the Treasury Department located in Washington.

The present Secretary of the Treasury in his annual report (pp. 25 and 26) earnestly urged upon Congress the need of reform in the system of refunding duties claimed to have been exacted in excess, closing his remarks on the subject as follows:

There is certainly imperative need for a remedy for this condition of things. Some system should be devised whereby these questions could be finally settled as they arise, and, in as many cases as possible, before the importer has made sale of his goods. The establishment of a special tribunal for the exclusive disposition of appeals in customs cases would not only relieve the Department and the courts, but would prove of incalculable benefit to honest merchants and manufacturers, as well as to the public at large.

Sections 16 and 17 are to take the place of sections 2922, 2923, and 2924, Revised Statutes, and extend to the board of general appraisers the power now conferred by those statutes upon the local appraisers and collectors to call before them the importer or other persons and examine them under oath concerning merchandise in question, and imposes penalties for failure to attend or refusal to answer, or for giving false testimony.

Section 18. This section contains provisions for the preservation of the records of proceedings of the board of general appraisers, and for giving such publicity to their decision as will afford useful information concerning values and classifications to parties interested, and for utilizing the samples required to be deposited in a place of samples at New York, under section 12 of the bill.

Section 19. The object of this section is to obviate the insuperable difficulties attending the administration of the seventh section of the tariff act of March 3, 1883, as interpreted by the courts, notably in the case of Oberteuffer *vs.* Robertson, wherein it was held in effect that the dutiable value of imported merchandise is not its value in condition as generally bought and sold in the foreign markets, but in a condition divested of coverings of every kind, and of all costs or charges for wrapping, folding, ticketing, and other expenses necessary to place the goods in a marketable state.

Early after the passage of the act of 1883 Secretary Folger invited the attention of Congress to the difficulties encountered in administering this section, and Secretaries Manning and Fairchild repeatedly expressed to Congress their views as to the impracticability of securing the just appraisement of merchandise while this section remained in force. Mr. Fairchild, then Assistant Secretary, in a communication to

Hon. A. S. Hewitt, under date of April 26, 1886, referring to said decision, said:

The effect of this decision is to reduce materially, but in an irregular and uncertain manner, the duties upon all merchandise subject to ad valorem rates, and to afford advantage to those importers who are least scrupulous.

And in a report dated November 27, 1886, he said, after reciting very fully and pointedly the troubles experienced in administering said section, that—

The law, requiring as it now does the appraising officer to find the market value of articles at the time and place of exportation, and at the same time directing them to find such value in a condition in which the articles are not sold at that time and place, or at any time or place, presents difficulties which call for an amendment of the law. At present every advantage is offered to the unscrupulous and every disadvantage to the conscientious importer.

In his annual report for 1887 Secretary Fairchild observed that—

The law relating to covering of imported goods should be amended in the interest of honest and equitable administration.

And again, in his report for 1888, he recommended

the simplification of the law relating to the determination of the dutiable value of merchandise subject to ad valorem rates, particularly with respect to coverings, packing charges, etc.

Secretary Windom in his recent annual report on this subject says:

It is necessary, in order to enable appraising officers to make uniform and satisfactory appraisements, that they be relieved from the embarrassments imposed upon them by the law which exempts the coverings, charges, etc., from duty, and which has been productive of constant trouble, fraud, and litigation. In very many cases merchandise has no market value apart from its coverings and incidental packing, and the arbitrary rule that a part of this value shall be deducted in the assessment of duty is illogical, and, in fact, requires the appraising officers to do an impossible thing—to work an incongruity.

From March 1, 1823, to March 3, 1883, a period of sixty years, covering packing charges, etc., were elements of the dutiable value of imported goods except during the brief period intervening between the acts of March 3, 1865, and July 28, 1866. The haste with which the latter act was passed indicates that the old rule was restored on account of the difficulties experienced in administering the law providing for the exemption of coverings.

Indeed, all experience appears to justify the conclusion "that the only just, certain, and simple basis for dutiable value is the merchandise in the complete, and packed condition in which it is presented to the eye of the appraising officer."

This section is practically identical with a section of the Mills tariff bill.

While it returns to the former legislation and will accomplish the desired purpose, it does not include as dutiable items charges for inland transportation, shipment, transshipment, commissions, brokerage, insurance, export duties, etc., as was provided in sections 2907 and 2908, Revised Statutes.

It omits also the penal duty of 100 per cent. in certain cases prescribed by section 7 of the act of 1883. In lieu thereof it subjects unusual coverings containing free goods or goods subject to specific duty to the duty only to which such coverings would be liable if separately imported.

Section 20 is a revival of section 909, Revised Statutes, which was derived from the customs act of 1799. Its re-enactment is required in conformity with section 7 and other provisions of the bill.

Section 21. Omitting a proviso as to fees, this section is similar to one contained in the Hewitt bill and also to one in the Mills bill, and the Senate substitute therefor, of the last Congress, and has had the approval of Secretary Fairchild, and conforms to a recommendation contained in Secretary Windom's annual report.

Section 22. The purpose of this section is to abolish allowances for damage provided for by section 2927 Revised Statutes. This legislation is demanded by reputable importers throughout the country as being necessary to prevent the evasion of duties by dishonest merchants to the consequent detriment of honest traders. It is also needed to prevent imposition on the public by the importation and sale of merchandise of an inferior and unwholesome character.

A number of the Secretaries of the Treasury, including Mr. Manning, Mr. Fairchild, and Mr. Windom, have brought to the attention of Congress the abuses which have been practiced under the present law, and have advised its repeal or modification. A measure to that end was introduced by Mr. Hewitt in the Forty-eighth Congress, and similar propositions have appeared in the tariff bills introduced in each succeeding session of Congress.

Secretary Windom, in urging the abolition of damage allowances in his annual report, said:

> The law under which rebate of duties is allowed on imported merchandise for damage on the voyage of importation was passed in 1799, when water transportation was confined to sailing vessels. Owing to long voyages and incidental exposure to weather and water, merchandise was liable to damage and deterioration, from which the owner could not then, as now, protect himself by marine insurance.
>
> Within recent years almost all merchandise subject to damage is transported in steamers making quick transit, and there is but little liability to actual damage; so that the causes which led to the enactment of the original law have largely disappeared. The law has now become a convenient means for the perpetration of frauds of the most scandalous character, is demoralizing to customs officials, and operates so uniformly and largely to the advantage of the unscrupulous that its repeal is generally demanded by honest merchants throughout the country.

Section 23. This section modifies the present law (sections 3012½ and 3013, Revised Statutes), only so far as is necessary to conform the same, with respect to refund of overpayments, to the provisions of sections 14 and 15 of the bill.

Section 24. This section is new and is adopted from the Senate "Undervaluation Bill" of the last Congress. Its purpose, as set forth in the report of the committee on that bill, is "to relieve collectors and other officers of the customs on suits as respects any matter or thing wherein the owner, importer, consignee, or agent is authorized to appeal from any decision provided for in the bill."

Having provided a complete remedy by sections 14 and 15 for any case that may arise upon the importation of goods, it is thought wise to insert this section so that when an appeal is authorized no other remedy shall be allowed.

Sections 25 and 26. These sections were drafted at the instance of Secretary Manning and were included originally in the Hewitt bill as well as in the Mills bill, the Senate substitute, and the tariff bills introduced by Mr. Randall in the last Congress. They are aimed particularly at abuses at the larger ports in connection with the examination of passengers' baggage. It has been found in practice that sections 5451, 5452, 5501, and 5502, Revised Statutes, are inadequate to correct abuses referred to.

Section 27. The purpose of this section is manifest from its terms; it is intended to promote the convenience of travelers in transit through the country, and is copied from the Hewitt bill.

Section 28. This section is a substitute for section 2499, Revised Statutes, originally enacted August 30, 1842, and modified by section 6 of the act of March 3, 1883.

Its purpose is to furnish the classifying officers with a plain and certain rule for the classification of merchandise not enumerated or definitely provided for in the tariff schedules, and which by reasons of the fact that such merchandise may assimilate to, or be a substitute for articles so enumerated or provided for, should logically be classified accordingly, rather than under section 2516, Revised Statutes (2513 of section 6 act of March 3, 1883).

In the progress of the arts and manufactures new processes and discoveries are constantly made resulting in articles not named or provided for in the tariff but which answer the uses of those named or provided for. Then again the ingenuity of man is invoked to make articles in new forms and in new names in order to take them out of their proper classification and secure their admission at a lower rate of duty.

In Stewart *vs.* Maxwell (16 How., 150) the court, referring to this law, said:

> By providing for the principal thing it has provided for all other things which the law declares to be the same. It is only upon this ground that sheer and manifest evasions can be reached. Suppose an article is designedly made to serve the uses and take the place of some article described, but some trifling or colorable change is made in the fabric or some of its incidents. It is new in the market; no man can say that he has ever seen it before. But it is substantially like a known article which is provided for. The law of 1812 then declares that it shall be deemed the same and to be charged accordingly. The effect of this is to hold that such an article is provided for under the name of what it resembles.

In such cases it is but fair that it should pay the same duty as the article which it displaces and of which it is the commercial equivalent.

Embarrassments in administration have arisen owing to differences of opinion as to the meaning and proper application of some of the provisions of section 2499, and no definite or satisfactory rule as to their application has been established either by the courts or the Treasury Department. This has led to differences of construction and of classification at the various ports and to much litigation. Some customs officers have held that such articles only as are specifically named are "enumerated," whilst others hold that if an article falls within any specific or residuary provision of any of the schedules, by reason of its condition or component material, it is enumerated. The latter is believed to be a reasonable rule of construction as fairly indicating the legislative intent, and is sought to be enforced by this section.

Secretary Folger in a letter dated February 27, 1884, to the chairman of the Committee of Ways and Means of the House, invited the attention of Congress to the need of some simplification or legislative definition of the existing law. (Section 2499. See page 6, Appendix to Report of the Secretary of the Treasury on the Collection of Duties, 1886.)

In a letter dated March 29, 1886 (*Id.*, p. 42), Acting Secretary Fairchild recommended a substitute for the present law, the purpose of which was explained in his letter to Mr. Hewitt, dated February 22, 1886 (*Id.*, p. 49), as follows:

> This section is a reproduction, in substance, of the so-called similitude section of the present law, with the addition of a clause explaining the meaning of the phrase "component material of chief value," and prescribing a rule whereby the same is to be determined. The absence of such a rule heretofore has been fruitful of difficulties in administration and has led to litigation. The effect of this amendment can not be foreseen, but it is thought that its tendency will be to prevent the evasion of lawful duties.

[illegible]ndise under certain of the sched
nificant part of metal or other material, provi
component material to be taken into account
be a substantial percentage of the value of th

The section also provides another necessary
rates of duty in cases where the relative valu
rials in an article is evenly balanced.

Your committee recommend the passage of
a substitute for said bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 7.

ERECTION OF UNITED STATES PRISONS.

JANUARY 17, 1890.—Recommitted to the Committee on the Judiciary and ordered to be printed.

Mr. STEWART, of Georgia, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 182.]

Your committee have had under consideration the bill (H. R. 182) for the erection of United States prisons, and beg leave to submit the following report:

Your committee report the accompaning substitute, which they recommend do pass, and also recommend that the original bill lie on the table, and that the substitute and report be printed and recommitted to the Committee on the Judiciary.

[House Report No. 1705, Fiftieth Congress, first session.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3315) for the erection of a United States prison and for the imprisonment of United States prisoners, and for other purposes, submit the following report:

Your committee submits a substitute for said bill, and recommends the passage of the same.

Your committee find that, under the regulations of the Department of Justice, the United States prisoners are farmed out and imprisoned in the penitentiaries of the States, and in some instances, where States have adopted what is known as the "chain-gang" system, United States prisoners are carried many miles to other States and imprisoned where there are established penitentiaries.

That persons convicted of crime in Georgia and other Southern States are carried to the State of New York and imprisoned in the penitentiary of that State. This is attended with great cost, and often persons who are unused to the cold climate to which they are subjected become sick, and in some instances die, from such change of climate.

Your committee are of the opinion that the United States should have a system of imprisonment separate and apart from that of the States, and your committee are further of the opinion that it will be in the interest of humanity that the Government establish a plan or places of imprisonment, and that it have supervision and entire control of its own prisoners.

Your committee recommend the purchase of two sites, and the erection of two prisons, one north and the other south of parallel 39.

Your committee are induced to make this recommendation for the establishment of two prisons, believing that the number of prisoners and the question of climate justifies the erection of two instead of one prison.

Your committee herewith submit the recommendation of the Attorney-General on the subject.

labor. This necessitates a resort to experiments in o
necessarily be made for the working of convicts, if di
the prisoners' health and comfort considered.

In the institutions where the larger majority of th
heretofore been confined, the Government has been
at all, for the keeping of its convicts, but recently th
by these penitentiaries that in view of the laws of th
Congress, they are unable to receive United States pri
terms as heretofore; and the Department, recognizin
has entered into new contracts at prices ranging from
prisoner; so that at the present time, in almost ever
victed in the United States courts throughout the co
per diem compensation for his subsistence and care w
Apart from this, the difficulty of obtaining suitable pe
of prisoners convicted in States where no proper prisc
of imprisonment is such that the Department could no
victs to come under its provisions, is a serious item fo
with this subject. The number of institutions that wi
side the State in which they are located is limited, and
lieve that there will be fewer in the coming years. Th
to meet the question directly and provide at once some
ment of its criminals or pay exorbitant rates and confi
entirely unsuited for their incarceration.

The cost of conducting a Government penitentiary
greater eventually than the cost of subsisting the pri
tiaries throughout the country will be. There are at
prisoners serving sentences. If two penitentiaries wer
ically that they would be easy of access to the different
ficulties now lying in the way of being able to properly
would be obviated and the United States would not be co
State institutions for the keeping of its own criminals.

Again, if an institution such as referred to should be er
have direct and absolute control of all its convicts. At
indirect way, although it is proper to state that all the
Government prisoners are confined readily accede to the
adopting any plans or accepting any suggestions lookin
States prisoners.

A large number of prisoners convicted in United State
committed but a single offense, and who have but comm
they could be prevented from associating with hardened
in an institution which in every way suggests a crimina
be reformed. Besides, many are young men who have h
sponsibility, and who, through temptation, have commi
laws of the country. These, and the class referred to ab
in a prison, but the Government should provide a suitabl
influences could be thrown around them and their reforma
in several States.

The bill

Report of Attorney-General W. H. H. Miller, for 1889.

UNITED STATES PRISONERS.

As has been the custom for a number of years, the usual examinations of the penitentiaries, prisons, and reformatories where United States prisoners are confined have been made, and every attention paid by the Department's agents to the care and treatment of the prisoners of the United States. The reports of the agents show the penitentiaries to be generally in good condition and the convicts humanely treated and well cared for.

UNITED STATES PENITENTIARY AND A UNITED STATES REFORMATORY.

I will not repeat what has been stated heretofore, but would respectfully call your attention to the several reports of my predecessors. With each year the need of Government penal institutions becomes more apparent. In the present situation of affairs the Department is compelled to rely upon the several State institutions for the care and maintenance of Government convicts. Owing to the agitation of the labor question, a number of States have passed laws prohibiting the employment of prisoners on contract labor. Congress, on February 23, 1887, passed an act prohibiting the employment of United States prisoners on contract labor. The result has been that many institutions throughout the country have been compelled to change their system of labor, and as a result have not been self-supporting. This, together with the fact that United States prisoners can no longer be employed on contract labor, has obliged the penitentiary authorities to charge the Government stated per diems for the subsistence of United States prisoners, whereas heretofore they were able to keep them without charge, the extra expense being but small, and the labor of the prisoners more than compensating for the cost.

Again, the legislatures in several States have enacted laws to the effect that no prisoners convicted outside of the State can be received in the several penal institutions of the State.

In many of the districts of the United States there is no penitentiary suitable for the confinement of Government convicts, and the attorney-general is compelled to make arrangements for their incarceration in prisons situated in other States and Territories. At the present time there is not a single institution in the country which will receive United States prisoners free of cost. The number of penitentiaries which will receive United States prisoners from outside the State at all is becoming limited, and in some cases the transfer of Government convicts from one penitentiary to another becomes necessary in view of the vacillating enactments of the legislatures in the several States. Should all the States in which suitable penitentiaries are located enact laws excluding United States prisoners, the Government will be compelled to hire quarters for its criminals, or to designate institutions which are in no way proper places for their confinement.

A large proportion of the prisoners of the United States are those who have committed but one offense against the laws of their country. Their lives theretofore have in a great many instances been exemplary. This one yielding to temptation has been the cause of their downfall. If such persons could be confined in an institution where contact with the criminal classes could be avoided, their reformation would often be speedy and complete, since their inclination in life is not towards crime. For the confinement of such prisoners, and especially for juveniles, in my opinion, a model United States reformatory should be built and conducted on the most approved plan.

The United States penitentiary should be provided for the reception of others than those who have committed their first offense. The number of this class is amply large to warrant the building of a good institution.

It seems to me that the United States should not be compelled to depend upon the several States for places in which to confine its prisoners.

PRISON BUREAU.

It is urged with much force that a prison bureau should be established in the Department of Justice, where could be gathered, collated, and recorded in a permanent form the criminal statistics of the United States. It is impossible at the present time to find any office or bureau where information concerning crime and criminals in this country can be obtained. The criminal statistics of the United States can not be compared with those of other nations. The advantages of such a bureau to the Government, State, county, and municipal officers and the public generally, would be invaluable. This prison bureau could be made the central office of the Bertillon system of measurements for the identification of criminals. It is believed the several States and Territories would co-operate and heartily indorse such a plan, and it would

revenue laws, 146 for counterfeiting, 119 for violati
for other offenses; 621 were born in the United States a
were males and 132 were females; 601 claimed to be
themselves to be intemperate: there were 734 whites, 1
Chinese; 778 could read and write, 35 could read only
write; 547 were married and 404 were single; 859 wer
and 92 had heretofore served sentence; 118 were unde
mitted, 275 between 20 and 30, 185 between 30 and 40,
216 over 50 years of age. Of the 1,252 prisoners in co
June, 1889, 220 were idle, 24 disabled or sick, 150 wer
"on piece price," 421 "on State account," and 345 on pr

Attached to my report (Exhibit L) is a detailed staten
penitentiaries used by the Government during the pa
names of the wardens, districts from which United Sta
ceived during the past year, and detailed statistics of
referred to in the above general summary.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 8.

RELATIVE TO OATHS IN PENSION AND OTHER CASES.

January 17, 1890.—Recommitted to the Committee on the Judiciary and ordered to be printed.

Mr. Buchanan, of New Jersey, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany H. R. 578.]

The committee have had under consideration the bill (H. R. 578) "In relation to oaths in pension and other cases." They find the object of the bill worthy, but feel that the object would be perhaps better secured by the substitute reported herewith.

Early in the history of the practice before the Pension Office the formal application, attested by two attending witnesses, was practically the main paper in the case. It is required to be executed before a clerk of a court of record. The applicant with the two attending witnesses in each case often have to travel many miles, at an expense which bears heavily upon them, to reach such an official. Under the present practice this paper has become but little more than a mere petition, and every substantial averment in it is required to be subsequently and independently established by auxiliary affidavits. These affidavits are now allowed to be executed before the same class of officials named in the bill.

Your committee can see no reason for not affording this relief, and recommend the passage of the accompanying substitute, and that the original bill do lie upon the table.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 9.

TO CREATE THE EASTERN DIVISION OF THE NORTHERN JUDICIAL DISTRICT OF GEORGIA.

JANUARY 17, 1890.—Recommitted to the Committee on the Judiciary and ordered to be printed.

Mr. J. D. STEWART, of Georgia, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany H. R. 174.]

Your committee have had under consideration the bill (H. R. No. 174) "To create the eastern division of the northern judicial district of Georgia," and recommend that the same do pass, with the following amendments:

That section 3, lines 1 and 2, be amended by striking out the following words: "which are local in their character;" and that after the word "therein," in line 4, insert the following: "suits for the recovery of lands shall be brought in the division of the district where the land is situated."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 10.

PAY AND RETIREMENT OF MATES IN THE NAVY.

JANUARY 21, 1890.—Recommitted to the Committee on Naval Affairs and ordered to be printed.

Mr. McADOO, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3301.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 3301) relating to the pay and retirement of mates in the Navy, having considered the same, submit the following report:

By the act of July 24, 1861 (12 Statutes at Large, 272), certain appointments for the temporary increase of the Navy, including those of masters' mates, were authorized and ratified. Section 2 of the act of March 3, 1865 (13 Statutes at Large, 539), "to increase the pay of midshipmen and others," provided that acting masters' mates should be styled "mates," and authorized an increase of their pay to a sum not exceeding $60 per month.

The naval appropriation bill of July 15, 1870 (16 Statutes at Large, 330), section 3, fixed the pay of mates as follows: Sea pay, $900: shore-duty pay, $700; leave or waiting orders pay, $500. This provision is now embodied in section 1556, Revised Statutes. The same act having repealed, except as to assistant surgeons, the authority for the appointment of temporary or acting officers in the Navy, there have been, since the passage of the act of July 15, 1870, no further appointment of acting masters' mates, or mates, nor has there been since then any change in the status or pay of mates in the Navy.

The act July 2, 1864, now section 1406, Revised Statutes, designates boatswains, gunners, carpenters, and sailmakers as "warrant officers," and under sections 1448–1455, Revised Statutes, they may be retired the same as commissioned officers.

Under existing law, however, mates are not classed as commissioned or as warrant officers, and therefore can not receive the benefit of the laws providing for the retirement of officers of the Navy.

Section 1408, Revised Statutes, authorizes the Secretary of the Navy, should the exigencies of the service so require, to cause seamen and ordinary seamen who have enlisted for not less than two years to be rated as mates, with the pay now provided by law for that grade; but that provision would not be affected by this bill, the operation of which is confined to the mates now in the service.

By section 1556, Revised Statutes, the pay of "warrant officers," *i. e.*, boatswains, gunners, carpenters, and sailmakers, is fixed as follows:

Term of service.	At sea.	On shore duty.	On leave or waiting orders.
First three years after date of appointment	$1,000	$900	$700
Second three years after date of appointment	1,200	1,000	800
Third three years after date of appointment	1,400	1,300	900
Fourth three years after date of appointment	1,600	1,300	1,000
After twelve years from date of appointment	1,800	1,600	1,200

As all the mates now in the service have served more than twelve years since the date of their appointment their pay will be increased by this bill to $1,800 sea pay, $1,600 shore duty, $1,200 leave or waiting orders.

It will be borne in mind that although the mates take precedence of warrant officers in line of duty their pay has always been much less and they have been entirely deprived of the increase of pay for longevity of service which is given to all other officers.

The committee find that some of these mates have been in the service upwards of forty years as enlisted men or officers; that nearly all of them were appointed and served in the Navy during the late war, while some were in the service in the Mexican war, and that many of them have performed the duties of commanding, executive, and deck officers, intrusted with the responsibilities that would be imposed upon ensigns and lieutenants. Their efficiency and usefulness is attested most cordially in memorials presented to the committee bearing the signatures of Admiral Porter, Vice-Admiral Rowan, Rear-Admirals Jenkins, Worden, Rodgers, Nichols, Patterson, Walke, Clitz, Leroy, and Rhind, Commodore Harmony, and many other of the foremost officers of the Navy, who earnestly favor the placing of the mates on the same footing as the warrant officers, as do the last and the present Secretary of the Navy.

In view of the long, faithful, and valuable service of these men, some of whom are now on the leave or waiting orders pay of $500 per year, the committee believe that it will be but simple justice to grant them the benefits of longevity pay and of the retired list now enjoyed by warrant officers, and therefore recommend that bill H. R. 3301 do pass, with the following amendments:

As one of the mates has died since this bill was introduced, amend by striking out the word "four" in line 5, and insert the word "three," so that it will read "thirty-three officers," etc. Also amend by striking out all of section 2 and insert as an addition to section 1 the following proviso:

Provided, however, That nothing herein contained shall be so construed as to authorize any increase of pay for any time prior to the passage of this act.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATVES. { Report No. 11.

LOAN OF PORTRAITS OF THE CHIEF-JUSTICES TO THE NEW YORK STATE BAR ASSOCIATION.

JANUARY 21, 1890.—Ordered to be printed.

Mr. O'NEILL, from the Committee on the Library, submitted the following

REPORT:

[To accompany S. R. 34.]

The reading of the joint resolution which passed the Senate January 13 explains fully the object sought to be accomplished.

The Bar Association of the State of New York very properly celebrates the centennial anniversary of the organization of the Supreme Court of the United States, which occurred in the city of New York February 3, 1790. The day of the celebration has been fixed for the 4th day of February, 1890, which was done to assure the presence of the Chief-Justice and the associate justices of the existing Supreme Court.

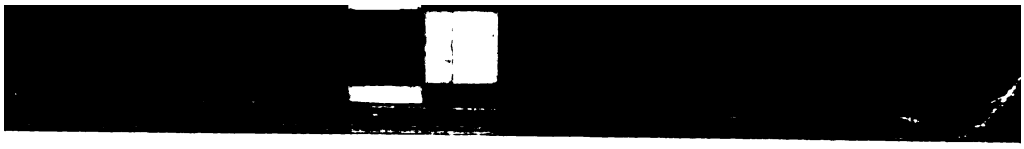
On Monday, February 3, the court meets for the delivery of opinions, which would have prevented the attendance of these distinguished jurists upon that day, their presence at the ceremonies being so desirable.

The Chief-Justice and associate justices who had been commissioned to constitute the Supreme Court of the United States were by appointment to meet in the city of New York on the first Monday of February, 1790, there being present that day Chief-Justice Jay and Justices Cushing and Wilson. A quorum not having been present, there was an adjournment until the next day, February 2. On that day there were present the Chief-Justice and Justices Cushing, Wilson, and Blair, making a quorum, when the court appointed a crier, adjourning until the next day, February 3, upon which day the Chief-Justice and the three justices just mentioned being present, appointed a clerk. This completed the organization of the court.

After considering the joint resolution, the committee unanimously report it to the House for adoption, deeming this celebration interesting to the people and a centennial most worthy to be held. Without these portraits of deceased Chief-Justices there would be wanting what, in the opinion of the committee, would make an incomplete success.

The chairman has been requested to present the report at an early day, and to ask for immediate consideration of the joint resolution.

O



51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 12.

DANIEL V. O'LEARY.

JANUARY 21, 1890.—Recommitted to the Committee on Claims and ordered to be printed.

Mr. DUNPHY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 23.]

The Committee on Claims, to whom was referred the bill (H. R. 23) for the relief of Daniel V. O'Leary, submit the following report:

The claimant was postmaster at Albany, N. Y. On April 26, 1888, at 1.30 in the day time, claimant's office was burglarized and the sum of $3,536.60, in postage stamps, was stolen therefrom.

The Postoffice Department has investigated the loss, and all the facts in the matter are set forth in Ex. Doc. No. 387, transmitted to the House of Representatives by the Hon. Don M. Dickinson, Postmaster-General, and dated July 5, 1888. In that document the Postmaster-General makes the following recommendation:

> In view of the circumstances in this case, I respectfully recommend that an appropriation be made authorizing credit to be given this postmaster for the amount of his loss.

The committee, therefore, recommend that the bill do pass, and beg leave to refer to said Executive document for facts justifying the above recommendation.

House Ex. Doc. No. 387, Fiftieth Co

LETTER FROM THE POSTMASTER-GENERA RELATING TO THE CLAIM OF DANIEL V. ALBANY, N. Y., AND RECOMMENDING AN RELIEF.

JULY 6, 1888.—Referred to the Committee on Clai

POST-OFFICE
OFFICE OF THE POST
Washingt

SIR: Pursuant to the requirements of the a titled "An act authorizing the Postmaster-G claims of postmasters for loss by burglary, fi casualty," since amended by the act of May 8 to transmit herewith the claim of Daniel V. Albany, N. Y., for credit for a loss sustained b the 26th day of April, A. D. 1888. The facts set forth in the proofs and a brief of the evider

The facts proved sufficiently establish that t personal fault or negligence on the part of the

As the loss exceeds the sum of $2,000 I am credit for the same, but required to transmit tl my recommendation thereon.

In view of the circumstances in this case, I that an appropriation be made authorizing cre master for the amount of his loss.

Very respectfully,

Do

Hon. JNO. G. CARLISLE,
Speaker House of R

postage-stamps, then in his hands as postmaster, resulting from "robbing the vault," and without fault or negligence on his part; that to the best of his knowledge and belief the value of said postage-stamps, is $3,526.60, and that the total value of the stamps and stamped paper remaining in his possession after said loss occurred is $19,960.14 and no more; that his belief as to the value of the stamps so lost is based upon the following calculation, viz.:

Stamps, etc., on hand April 1, 1888		$34,267.71
Stamps, etc., received from April 1, 1888, to date of loss		1,536.30
Surplus stock		1.59
Total to be accounted for		35,805.60
Stamps, etc., sold from April 1, 1888, to date of loss	$12,318.86	
Stamps, etc., on hand after the loss occurred	19,960.14	
		32,279.00
Loss		3,526.60

He states that at the same time, and in the same manner, he lost $10 "in pennies belonging to the postal funds."

He further states that the said loss occurred under the following circumstances: "On the 26th day of April, 1888, at about 1.30 p. m., and while the rooms of the postmaster and assistant postmaster, including the vault in which the postal funds, postage-stamps, and periodical and postage-due stamps, and the office records are kept, was in charge of said assistant postmaster (Isaac McMurdy), the office was entered by a thief or thieves, and postage and periodical stamps amounting to the aforementioned sum were abstracted from said vault, as set forth in the affidavit of said assistant postmaster filed herewith; that the thief or thieves have not been apprehended, tried, or convicted; and he has no personal knowledge of the facts above set forth, but bases them on information and belief, and as to the said information he has reason to believe and does verily believe it to be true."

(2) After the passage of the act of Congress approved May 9, 1888, viz: On June 16, 1888, the claimant made oath that at the time and in the manner above set forth he also lost postal funds to the amount of $10, for which he also claims credit.

(3) The claimant files the affidavit of the said McMurdy, which is in substance as follows:

"I am seventy-three years of age, and have been employed in the Albany, N. Y., post-office continuously for about forty-seven years; that during the last past twenty-five years, or thereabouts, I have held the office and performed the duties of assistant postmaster; that on the 26th day of April, 1888, at about 1.30 p. m., the clerks who assist in my office being absent therefrom, one, with the postmaster, having shortly before gone to dinner, and the other temporarily engaged in the money-order office, I was left in sole charge of that part of the post-office known as the postmaster's and assistant postmaster's rooms; that next adjoining, and connected with my room by iron doors, is the vault, in which postage-stamps, money, and records are kept; that on the day and the hour above named I was engaged in said vault in making a recount of cash, when my attention was attracted by a loud rapping at the window or opening in the partition which divides the room into a lobby for callers and the desk room where work is performed; I stepped to said window to learn what was wanted, and there saw two men, who were well dressed and apparently respectable, who informed me that a lady, a relative of Mr. Manning's, was standing at the door of the postmaster's room and desired to see him about a registered letter; I requested the men to say to the lady that if she would step to the registry window or come into the office lobby she would be waited upon; thereupon the men stepped to the door opening from the lobby into the corridor, and, after looking out and apparently talking to a person, returned and said that the lady still waited there and desired to see the postmaster or his assistant; I then walked to the door of the postmaster's room—a distance of 25 or 30 feet from the vault—and, suspecting no wrong and expecting to be delayed but a minute, I did not close the iron doors to the vault; on opening the door to the postmaster's room opening into the corridor I found the same two men standing there that had called my attention at first, but no woman; the men informed me that the lady had tired of waiting and gone up the stairway to the next floor, and would be back again in a minute, and one of the men ran up the stairway and beckoned as if to recall the woman, while the other requested me to lend him my lead pencil, which I did; he wrote something upon an envelope and handed the pencil back to me, and by that time the man who went up the stairs having returned, they started as if to go away, saying, as they did so, that the woman would probably come down in a minute; I thereupon closed the door of the postmaster's room and proceeded to the vault to resume the work in which I was engaged at the time of the interruption; on my way thither my attention was attracted to the door opening from the lobby into the desk room of my office being partly open; this door is invariably closed and fastened by a

[redacted] stamps were kept was given only a curso
have been undisturbed, its contents were not counted
the 7th day of May, in making up the periodical acco
ope, which, at the time of the larceny on the 26th of A
of the value of $1,366 60, was missing, and the stam
therein were missing; that I have good reason to bel
the aforesaid postage-stamps and periodical stamps,
$3,526.60, were stolen from the vault on the 26th d
persons acting in complicity with the two men who a
as aforementioned, and that at the same time and i
taken from the vault and carried away the sum of $10

(4) In another affidavit concerning the loss of the p
Mr. McCurdy states that the amount was determined b
time previous to the larceny he had made up two pack
ing $5, intending to use them in the purchase of street
rier service; the packages were placed in a paper box
pile of postage-stamps in the vault, as above stated. D
having access to the vault, and the packages were no
remained where he had placed them up to the time of
ponent found the box empty upon the floor of the vau
tained was nowhere to be found.

He further states that no count of the postal funds
larceny, but two counts were made subsequently, viz,
clerk, and on May 10, 1888, by Post-Office Inspector Ste
counts showed such a loss to have been sustained.

(5) There appears to be a considerable discrepancy b
stamps and stamped paper to be accounted for as stated b
by the records of the stamp division, as appears in the f
by the Third Assistant Postmaster-General, viz:

Stamps, etc., reported on hand March 31, 1888 .....
Supplies furnished from April 1 to date of loss .....

Total to be accounted for .....
Estimated sales to and including April 25, 1888 .....

Leaving the probable amount on hand morning of A
On hand after the loss occurred.....

Remainder to be accounted for .....

The amount thus arrived at is nearly $1,000 less th
would be still further reduced by deducting the amount
sold from the beginning of business April 26, 1888, to th
Of this amount the Department has no knowledge. T
mainly in the differing statements as to the amount rece
which the claimant gives as $1,536.30, and the Third Ass
$580.30. It appears from the records

It is known that all these supplies were received by the postmaster previous to the date of the loss; but the receipts are not dated, with the exception of those for the last two items, which are dated, respectively, April 21 and 26.

The discrepancy is explained, however, by the claimant, who states that from the 1st to the 25th of April, 1888, he made requisitions for "special request" envelopes of the value of $1,537.30, only a part of which were received before the burglary, but all of which he charged to his account, as they had been paid for at the time of the requisition. He also states that none of these envelopes are accounted for in his calculation of the loss, as "on hand after the loss," but are accounted for as sold before the burglary. The discrepancy is, therefore, immaterial, so far as the "total to be accounted for" is concerned; but there is considerable difference between the claimant's statement of the amount lost, and the estimate of the Third Assistant Postmaster-General, which can only be accounted for by the variation in the sales from quarter to quarter. That there is considerable variation, which is not surprising at so large an office, is shown by the quarterly returns of the postmaster, from which it appears that in the fourth quarter of 1887 he sold stamps, etc., of the value of $46,785.55, while in the next quarter the sales amounted to $42,775.45, a difference of $4,010.10.

(6) Subsequent to the passage of the act of May 9, 1888, the postmaster amended his claim so as to include the sum of $10 in postal funds, which are referred to in the affidavit of the assistant postmaster cited above.

(7) On May 2, 1888, George C. Stewart, post-office inspector, made the following report, viz:

"SIR: Having been detailed to investigate the robbery of the post-office at Albany, N. Y., I submit the following report: That from the assistant postmaster I learn that the robbery occurred at or near 1.30 p. m. April 26, 1888; that he was alone at the time

"You will find a detailed statement of the assistant postmaster in the shape of an affidavit, accompanied with a diagram of that part of the office where the thieves operated. Inclosed find a detailed statement of stock on hand in Albany post-office April 1, 1888, amount received from April 1 to 26, inclusive, and the amount on hand April 26, 1888. Statement shows loss of $2,160. You will also find statement showing what denomination the stamps were, and that value of same amounted to $2,160.

"I have taken great pains in this case in attempting to put the facts in a clear light, so that the Department might pass upon the question of responsibility of the loss with some satisfaction.

"The $2,160 stolen has been charged up as 'stamps sold,' or at least they have been charged to postmaster, and no doubt will be embraced in monthly report of the office in item 'stamps sold.'

"From the facts in the case I feel fully justified in recommending that the postmaster have credit for the amount ($2,160) mentioned above. I will add that active steps have been and are being taken to bring the thieves to an accounting. Four detectives at Albany, N. Y., are working upon the case, and Police-Inspector Byrnes, of New York, is assisting in the matter. From description of the parties furnished, two men are under suspicion, and an attempt is now being made to locate them."

With reference to the discrepancy between the amount claimed for stamps, viz, $3,526.60, and the amount stolen as stated by the inspector, viz, $2,160, it is to be observed that the assistant postmaster states that newspaper and periodical stamps of the value of $1,366.60, which, at the time of the inspector's visit were not known to have been taken, were afterwards found missing.

The sum of these two amounts, $2,160 and $1,366.60, gives the amount claimed, viz, $3,526.60.

Concerning this discrepancy, Inspector Stewart states in a report dated May 14, 1888: "The question of loss and responsibility were the only two topics of special investigation as I understood the nature of my trip to be. It did not occur to me to carry regular inspection blank forms and make a thorough inspection of the office. So being upon my arrival shown the inventory of stock taken immediately after the robbery, and upon which the assistant postmaster based his affidavit as to loss, I accepted the same as correct and upon it based all of my calculations as found in my original report, and which original report with all the papers therein is hereby returned as reference in obtaining full history of the case.

"From the inventory mentioned above it was found that stamps to the amount of $2,160 were not accounted for, and it was so reported. On the 7th or 8th of May I received notice from the Albany office that they had made an error in inventory taken April 26, which inventory had been accepted as correct, of $1,366.60 periodical and newspaper stamps, and attempting to explain how the error was made. * * * And on the night of May 10, 1888, I arrived at Albany and began an inspection of the office. * * * I attach copy of letter signed A. D. Hazen (late Third Assistant Postmaster-General), giving the postmaster's explanation of the manner the office was permitted to allow credit to publishers until the close of each quarter by publishers

... which the larceny was accomplished may be more

"STATE OF NEW YORK,
"*County of Albany:*

"Isaac McMurdy, of the State and county aforesaid, be
says: That I am assistant postmaster in the Albany po
that capacity for the last twenty-five years. I also serve
or twenty-five years in divers positions previous to filli
postmaster. I am seventy-three years of age. That on
at about 1.30 p. m., I was in the vault of the post-office,
gaged in a recount of my cash, when two men of good a
selves at the window of my office, marked O on diagram, a
of the window just mentioned attracted my attention. E
a moment, and being compelled to return therein to com
I allowed the doors to the vault to remain partly open,
marked O, to ascertain what was wanted. The men infor
tive of the late Daniel Manning, stood at the door of the
I, and wished to see the postmaster or his deputy in rel
I requested the men to notify her to go to the registry office
into the lobby of my office. They went to the door, marke
into the corridor returned and said that the lady was stil
some one at the postmaster's door, marked I. The postmast
nected with my office being absent, I walked into the posti
the door, marked I in the diagram, leading into the corridor.
standing there, and they said the lady had become tired of
the stairway, marked M on diagram, to the next floor, and w
one of the men starting up the stairway as if to call the lady
me in conversation. The man I was talking to had letters
for my pencil, which I handed him to make some memorand
versation while using my pencil, but soon handed the penci
that the lady did not show herself I returned to my office.
I noticed that the door, marked K, opening into the lobby,
left the room, was now partly open. The door is fastened b
only be opened from the inside or from the outside by reach
window, marked O. I closed the door and went into the v
had been previously engaged in. Then I discovered that a p
nally contained two packages or rolls of pennies to the amou
the floor of the vault and the pennies gone, and that a large
upon which said box had been sitting, were missing. I imm
Police Willard of the loss. By this time Clerks Willard an
to the office, the first named having been absent at dinner, a
temporarily serving in the money-order office. Assisted by
invoice of stock, and found the loss to be $2,160 in stamps
stamps, 10,000 5-cent stamps, 5,000 10-cent stamps, and 1,0
stamps, besides the $10 in pennies."

"I am satisfied that a confederate of the two men commit
engaged me in conversation, and th

also desire to state that when I was at the door of the postmaster's room, marked I in the diagram, it was impossible for me to see door of vault or door K or window.

"ISAAC MCMURDY,
Deputy Postmaster."

Sworn to before me this May 1, 1888.

GEO. STEWART,
Post-Office Inspector.

Claim for credit or re-imbursement under act of March 17, 1882.

STATE OF NEW YORK,
County of Albany, ss:

On this 24th day of May, 1888, before the undersigned, a justice of the city court of Albany in and for said county and State, personally appeared Daniel V. O'Leary, who, being by me first duly sworn, on oath says that he was postmaster at Albany, in the county of Albany and State of New York, on the 26th day of April, 1888; that on said date and at about 1.30 o'clock in the daytime, as nearly as he can determine, he sustained a loss of postage stamps, stamped envelopes, newspaper wrappers, and postal cards, then in his hands as such postmaster, resulting from robbing the vault, and without fault or negligence on his part; that the circumstances of such loss, and the cause and nature thereof, are fully set forth in the affidavit filed herewith as a part of this petition; that the value of postage stamps, stamped envelopes, postal cards, and newspaper wrappers so lost or destroyed is, to the best of his knowledge and belief, $3,526.60; and that the total value of such articles (including postage-due, special delivery, newspaper, and periodical stamps, stamped envelopes, newspaper wrappers, and postal cards), which actually remained in his possession after said loss occurred is $19,960.14, and no more; and that his belief as to the value of said articles so lost is based upon the following calculation, viz:

Stamps, etc., on hand April 1, inclusive, 1888	$34,267.71
Stamps, etc., received from April 1, inclusive, 1888, to date of loss	1,536.30
Surplus stock	1.59
Total to be accounted for	35,805.60
Stamps, etc., sold from beginning of quarter to date of loss	12,318.86
Leaving on hand before the loss occurred	23,486.74
Stamps, etc., on hand after loss occurred	19,960.14
Lost or destroyed	3,526.60

The petitioner further states that, at the time and in the manner above stated, he also lost money-order funds to the amount of $——, which were properly in his possession at the time, as shown by his affidavit (on Form 222) herewith filed; and that after said loss occurred there remained in his possession (not including any remittance in transit) money-order funds to the amount of $——, and no more; he therefore claims a credit of $—— for postage stamps, stamped envelopes, newspaper wrappers, and postal cards, and of $3,526.60 for money-order funds lost as aforesaid, or for such other amounts as may be found due him, on account of said loss.

He further states that, at the same time, and by the same robbery, he lost the following property, viz, $10 in pennies, belonging to the postal funds, the same being of the total value of $10 or thereabouts; that the said property was insured by the following companies, for the respective amounts mentioned, to wit: ——; that he has received, on account of such insurance, the sum of $——, and that the insurance did not include any of the articles for which credit is hereby claimed.

He further states that he reported the fact of said loss to the Post-Office Department on or about the 27th day of April, 1888; and that it occurred under the following circumstances, viz: On the 26th day of April, 1888, at about 1.30 p. m., and while the rooms of the postmaster and assistant postmaster, including the vault in which postal funds, postage stamps, and periodical and postage-due stamps, and the office records are kept, was in charge of said assistant postmaster (Isaac McMurdy) the office was entered by a thief, or thieves, and postage and periodical stamps amounting to the aforementioned sum were abstracted from said vault, as set forth in detail in the affidavit of said assistant postmaster, filed herewith; he further states that the thief or thieves have not been apprehended, tried, or convicted; and he has no personal knowledge of the facts above set forth, but bases them on information and belief, and as to the said information he has reason to believe, and does verily believe it, to be true.

DANIEL V. O'LEARY,
Postmaster.

Subscribed and sworn to before me this 24th day of May, A. D. 1888.

[SEAL.] JNO. W. WALSH,
Justice City Court of Albany.

[illegible] resulting from burglary on the date last me
losses set forth in said claim he lost by the said lar
of $10, for which he now claims credit; and that th
was determined by the following calculation, whi
just, viz:

Balance, lost by larceny, $10, as set forth in the af
ant postmaster, filed herewith.

Subscribed and sworn to before me this 16th day o
[SEAL.]

STATE OF NEW YORK,
County of Albany, ss:

Isaac McMurdy, of the city of Albany, county of Al
being duly sworn, deposes and says: I am seventy-
been employed in the Albany, N. Y., post-office contin
years; that during the last past twenty-five years or
office and performed the duties of assistant postmast
April, 1888, at about 1.30 p. m., the clerks who assist in
from—one, with the postmaster, having shortly before
temporarily engaged in the money-order office—I was l
of the post-office known as the postmaster and assistant
adjoining and connected with my room by iron doors
stamps, money, and records are kept; that on the day
was engaged in said vault in making a recount of cas
tracted by a loud rapping at the window or opening i
the room into a lobby for callers and the desk-room
stepped to said window to learn what was wanted, and
well dressed and apparently respectable, who informed
Mr. Manning's, was standing at the door of the postma
him about a registered letter. I requested the men t
would step to the registry window or come into the offi
upon. Thereupon the men stepped to the door open
corridor, and, after looking out and apparently talki
said that the lady still waited there and desired to see t
I then walked to the door of the postmaster's room, a d
the vault, and suspecting no wrong and expecting to
not close the iron doors to the vault; on opening the d
opening into the corridor, I found the same two men st
my attention at first, but no woman; the men informe
of waiting and gone up the stairway to the next floor a
minute, and one of the men ran [illegible]

just previously placed two packages, each containing $5 in pennies, and it was empty; upon further examination I discovered that nearly all of the postage stamps which the aforesaid pile had contained were also missing; I immediately caused the police authorities to be notified of the larceny and, assisted by the clerks of my office, proceeded to take an account of stamps on hand; the result of that examination showed a loss of $2,160 worth of postage-stamps, consisting of the following denominations, to wit: 22,000 4-cent stamps, 10,000 5-cent stamps, 1,200 15-cent stamps, 5,000 10-cent stamps, and 1,000 10-cent special-delivery stamps; that in said examination a careful and accurate count of all postage-stamps, stamped envelopes, postal cards, and newspaper wrappers was made, but that the drawer in which the periodical stamps were kept was given only a cursory glance, and, it appearing to have been undisturbed, its contents were not counted; that subsequently, to wit, on the 7th day of May, in making up the periodical account, I discovered that an envelope which, at the time of the larceny on the 26th of April, contained periodical stamps of the value of $1,366.60 was missing, and the stamps also which were contained therein were missing; that I have good reason to believe, and do verily believe, that the aforesaid postage and periodical stamps, amounting in the aggregate to $3,526.60, were stolen from the vault on the 26th day of April by some person or persons acting in complicity with the two men who attracted and held my attention as aforementioned, and that at the same time and in the same manner there was taken from the vault and carried away the sum of $10 in pennies. And deponent says further that though the thief, or thieves, has not been apprehended, measures have been taken by the police of Albany and elsewhere, as he is informed, to bring about that result.

ISAAC MCMURDY.

Sworn and subscribed to before me this 24th day of May, 1888.
[SEAL.]

JNO. W. WALSH,
Justice City Court of Albany.

STATE OF NEW YORK,
County of Albany, ss:

Thomas H. Willard, of the city and county of Albany and State of New York, being duly sworn, says: I am employed in the post-office at Albany, N. Y., as head clerk; on my return from dinner at about 2 p. m. April 26, 1888, I was informed by the assistant postmaster, Isaac McMurdy, of the circumstances attending the loss of postage-stamps, etc., as narrated in the foregoing affidavit by him made; acting under instructions of the postmaster, Daniel V. O'Leary, the stamp account was immediately closed, and an examination and inventory made of the postage-stamps, stamped envelopes, postal-cards, and newspaper wrappers then on hand; I assisted in making said examination and count; I have read the claim of Daniel V. O'Leary, postmaster, for credit, and the affidavit above made by Isaac McMurdy, assistant postmaster, and know that the statements therein contained relative to the findings of that examination, and of the subsequent examination on May 7, are true and correct; I have no pecuniary interest in the claim for credit of which this is a part of the evidence.

THOMAS H. WILLARD.

Subscribed and sworn to before me May 24, 1888.
[SEAL.]

JNO. W. WALSH,
Justice City Court of Albany.

STATE OF NEW YORK,
County of Albany, ss:

Charles H. Zeilman, of the city and county of Albany, State of New York, being duly sworn, deposes and says: I am employed as a stamp clerk in the post-office at Albany, N. Y.; at about 2.30 p. m., on the 26th day of April, 1888, I was directed by Daniel V. O'Leary, postmaster, to close the stamp account and assist in making an examination and count of all postage-stamps, stamped envelopes, postal-cards, etc., then in his possession. I did as directed. The assistant postmaster and Clerk T. H. Willard made the count and I did the figuring. As a result of said count and examination I ascertained that the value of stamps, etc., on hand at the time was $21,326.74; that the value of stamps, etc., on hand at the beginning of the quarter (April 1) and received since, up to and including April 26, was $35,805.60; that the value of stamps, etc., sold during that period (April 1 to April 26, both inclusive) was $1,318.68, and that the amount was ascertained from the weekly accounts of stamps, etc., sold; that the

[illegible]-cent stamps	75.30	
[illegible]-cent special-delivery stamps	29.70	
Postal-cards:		
1-cent	556.35	
2-cent	1.16	
Envelopes:		
No. 3, 1-cent, first quality	1.12	...
3, 2-cent, first quality	56.70	
4½, 1-cent, first quality	7.08	...
4½, 2-cent, first quality	381.78	
4½, 2-cent, second quality	.....	...
5, 2-cent, first quality	377.34	
5, 2-cent, second quality	.....	
6, circulars	61.32	
7, 2-cent, first quality	.09	...
8, 2-cent, first quality	1.17	...
12, 1-cent wrappers	71.05	
12, 2-cent wrappers	.78	
11, 2-cent, first quality	.55	
Letter-sheet envelopes	29.53	
Total	5,890.16	3,

That the deficiency in stamps amounted to $2,160, and tl
Making up the amount of $21,326.74, "stamps, etc., on han
of business April 26, there was included $1,689.08 worth of
I am informed, and have reason to believe, and do verily l
and verified at the time; and I further declare as my beli
formation in regard to the examination, that had an actua
stamps then been made, I would have found the value o
have been $19,960.14, instead of the amount hereinbefore s
I have no pecuniary interest in the claim for credit of w
evidence.

Subscribed and sworn to before me May 24, 1888.
[SEAL.]

Just

STATE OF NEW YORK,
County of Albany, ss:

Isaac McMurdy, of the city of Albany, county of Albany,
being duly sworn, deposes and says: That he is assistant po
that he served in that capacity on the 26th day of April, 1
about 1.30 p. m., the post-office was entered by a thief or th
vault of said office, in addition to a large amount of posta
postal funds to the amount of $10; that he determines the an
of the following facts, viz: That a short time previous to
did make up two packages of pennies, each containing $5,
paper box, intending to use them in the purchase of horse-ca
service; that said box and contents were then by him dep
postage stamps in said

the chief clerk, and again on the 10th day of May, by Post-Office Inspector Stewart and the result of said counts showed such a loss to have been sustained.

ISAAC MCMURDY.

Subscribed and sworn to before me, June 15, 1888.
[SEAL.]

JNO W. WALSH,
Justice City Court of Albany.

POST-OFFICE, ALBANY, N. Y.,
Albany, June 27, 1888.

DEAR SIR: Yours of the 20th instant was received on the 21st, but absence from the city has prevented an earlier reply.

The seeming discrepancy in the item of stamps, etc., received to date of loss is explained as follows:

A circular from the office of the Third Assistant Postmaster-General, bearing date of October 16, 1882 (see Postal Guide for January, 1883, page 796) contains the following clause:

"It must be understood by postmasters, that all envelopes sent to them on their requisition are regarded as being supplied, not when they are mailed from the agency, nor when they arrive at the post-office for which they are ordered, but at the date when the order on the contractor for furnishing them is issued by the Department, and they are accordingly so charged against postmasters' accounts."

As a postmaster has no means for determining the "date when the order on the contractor for furnishing them is issued by the Department," this office has invariably debted itself with the amount of such requisition on the date when the requisition was made. Orders for special-request envelopes are always accompanied by cash and a corresponding credit is therefore taken for the sum of such requisition in the amount of stamps sold.

The value of requisitions made by me for "special-request envelopes" from March 31 to April 26, inclusive, is $1,537.30, as shown by the inclosed transcript of my special-request order book, all of which, under my construction of the clause above quoted, are to be regarded as having been supplied, even though but a portion of the requisitions (in amount $580.30) had actually been received.

Very respectfully,

D. V. O'LEARY,
Postmaster.

Hon. EDWIN E. BRYANT,
Assistant Attorney-General for Post-Office Department, Washington, D. C.

POST-OFFICE DEPARTMENT,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., June 30, 1888.

Respectfully returned to D. V. O'Leary, esq., postmaster, with the request that he will state whether the "special request" envelopes within referred to as not received at the time of the burglary were also accounted for (in his estimate of the loss) as "on hand after the loss occurred." These papers to be returned.

EDWIN E. BRYANT,
Assistant Attorney-General.

POST-OFFICE, ALBANY, N. Y.
OFFICE OF POSTMASTER,
Albany, July 2, 1888.

Respectfully returned to Hon. E. E. Bryant, Assistant Attorney-General, Washington, D. C., with information that the special request envelopes referred to as not received at the time of the burglary were *not* accounted as "on hand after the loss occurred." Special request envelopes are regarded as being received *and sold* on the day on which they are ordered from the Department.

D. V. O'LEARY,
Postmaster.

Post-office at Albany, N. Y.

Daniel V. O'Leary, postmaster, claims credit for loss sustained in the larceny from his post-office on the 26th April, 1888, at 1.30 p. m. Amount claimed, $3,526.60; amount saved, $19,960.14.

Reported amount of stamps, etc., on hand March 31, 1888, as per returns to the auditor	$34,267.71
Sent on subsequent orders prior to 26th April, 1888	580.30
Total	34,848.01
Deduct estimated sales for twenty-five days (the average daily sales being $489.40)	12,235.00

[illegible] to the inclosed statement of the claim of the postmaster Albany, State of New York.

Please return this with such information as you may have upon the claim; particularly as to the amount of postage-stamp newspaper wrappers, and postal cards in the hands of the pos the alleged loss.

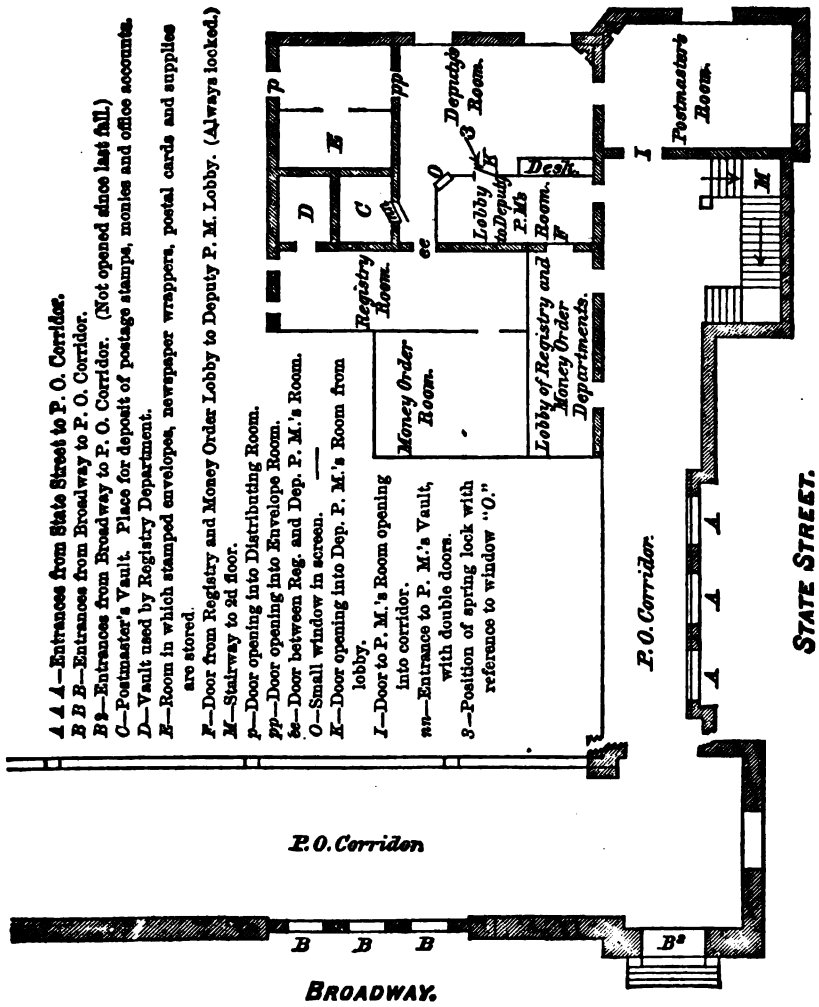
Please reply on the inside of this sheet.

EDWIN I

Assistant Attorney-General, Po

Requisitions for post-office supplies.

Made.	Ordered from—
1888.	
Apr. 1*	Albany Aniline Company, 500 No. 4½ 2 cent, first quality
	W. M. Whitney & Co , 2,000 No. 4½ 2 cent, first quality
	P. V. Fort, Sons & Co., 3,000 No. 4½ 2 cent, first quality
	P. J. McArdle, 1,000 No. 4½ 2 cent, first quality
2	J. Moir, 1,000 No. 3 2 cent, first quality
3	P. O. Box 41, 500 No. 5 2 cent, first quality
	Delaware and Hudson Canal Company, 5,000 No. 5 2 cent, first qual
5	People's Railway Guide, 500 No. 4½ 2 cent, first quality
	Cottrell & Leonard, 2,000 No. 5 2 cent, first quality
9	Auer & Stern, 500 No. 5 2 cent, first quality
	G. W. Van Slyke & Co., 3,000 No. 4½ 2 cent, first quality
	Strain & Reynolds, 1,000 No. 4½ 2 cent, first quality
	Smith, Pratt & Herrick, 1,000 No. 5 2 cent, first quality
12	H. S. Quackenbush, 500 No. 4½ 2 cent, first quality
	Charles S. May & Co., 500 No. 5 2 cent, first quality
	W. G. Morton, 1,000 No. 5 2 cent, first quality
	Thomas C. Cooper, 2,500 No. 5 2 cent, first quality
13	R. J. Doolan, 500 No. 5 2 cent, first quality
	H. S. Van Santford, 500 No. 5 2 cent, first quality
16	Durant, Elmore & Bliss, 10,000 No. 4½ 2 cent, first quality
17	Moak & Buchanan, 2,000 No. 4½ 2 cent, first quality
	Stedman, Thomson & Andrews, 500 No. 4½ 2 cent, first quality
	Gratwick & Fryer, 1,000 No. 5 2 cent, second quality
	Hay & Co., 1,000 No. 5 2 cent, first quality
	Wing Bro. & Hartt, 5,000 No. 5 2 cent, first quality
19	J. E. Walker, 2,000 No. 4½ 2 cent, first quality
	A. B. Van Guasbeek & Co., 1,000 No. 4½ 2 cent, first quality
	Douglas L. White & Co., 1,000 No. 4½ 2 cent, first quality
	Durant & Co., 2,000 No. 5 2 cent, first quality
20	First National Bank, 10,000 No. 4½ 2 cent, second quality
21	Fletcher Vosburgh, 500 No. 5 2 cent, first quality
	Heiser, Muhlfelder & Co., 500 No. 5 2 cent, first quality
	Willard E. Masten, 500 No. 4½ 2 cent, first quality
	W. M. Whitney & Co., 2,000 No. 4½ 2 cent, first quality
	W. L. Dresser & Co., 500 No. 5 2 cent, first quality


A A A—Entrances from State Street to P. O. Corridor.
B B B—Entrances from Broadway to P. O. Corridor.
B²—Entrances from Broadway to P. O. Corridor. (Not opened since last fall.)
C—Postmaster's Vault. Place for deposit of postage stamps, monies and office accounts.
D—Vault used by Registry Department.
E—Room in which stamped envelopes, newspaper wrappers, postal cards and supplies are stored.
F—Door from Registry and Money Order Lobby to Deputy P. M. Lobby. (Always locked.)
M—Stairway to 2d floor.
p—Door opening into Distributing Room.
pp—Door opening into Envelope Room.
ee—Door between Reg. and Dep. P. M.'s Room.
O—Small window in screen.
K—Door opening into Dep. P. M.'s Room from lobby.
I—Door to P. M.'s Room opening into corridor.
nn—Entrance to P. M.'s Vault, with double doors.
S—Position of spring lock with reference to window "O."
P. O. Corridor
Money Order Room.
Registry Room.
Lobby of Registry and Money Order Departments.
Lobby to Deputy P. M's Room.
Desk.
Deputy's Room.
Postmaster's Room.
P. O. Corridor.
STATE STREET.
BROADWAY.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 13.

INCREASE OF PENSIONS IN CERTAIN CASES.

JANUARY 21, 1890.—Recommitted to the Committee on Invalid Pensions and ordered to be printed.

Mr. MORRILL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 835.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 835) granting an increase of pensions in certain cases, submit the following report:

The object proposed by the bill is to correct certain inequalities and injustices arising under the act of June 16, 1880. Your committee, having carefully considered the bill, report the accompanying substitute and recommend its passage.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 14.

HIRAM JOHNSON AND OTHERS.

JANUARY 21, 1890.—Recommitted to the Committee on War Claims and ordered to be printed.

Mr. ENLOE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1610.]

The facts out of which this claim for relief arises and the reasons of the committee for recommending the passage of the bill will be found stated in the report of the Committee on War Claims, submitted to the second session of the Forty-sixth Congress, by General Bragg, of Wisconsin, who was then chairman of said committee, which report is as follows:

[House Report No. 1345, Forty-sixth Congress, second session.]

The Committee on War Claims, to whom was referred the petition of Hiram Johnson and others for relief, submit the following report:

The facts out of which this claim for relief arises will be found stated in House report of the Committee on Military Affairs, No. 184, second session, Forty-fourth Congress, and in reports from the Secretary of War, with correspondence attached, on file with the papers in the case, and are in substance as follows:

On the 25th day of November, 1862, a party of rebels made a raid upon a small force of Union troops stationed at Henderson, in the State of Tennessee, on the Mobile and Ohio Railroad. The raiding party captured the Union troops, with their arms and camp equipage, burned a quantity of cotton belonging to the United States and to private individuals, and also destroyed the depot buildings and water-tank belonging to the railway corporation.

Thereupon, on the 2d day of December following, the commandant of the Union forces at the post of Bethel, Tenn. (Col. J. N. Haynie, Fortieth Regiment Illinois Volunteers), appointed a board of officers to investigate the losses sustained and appraise the damages suffered from the raid, with a view to an assessment, by way of reprisal, upon rebel sympathizers in and about Henderson.

The board so appointed assessed the value of the property captured and destroyed as follows:

Cotton burned belonging to the United States	$1,900.00
Arms and camp equipage belonging to the United States	3,180.00
Total belonging to the United States	5,080.00
Cotton belonging to private persons	18,171.36
Railway property	3,500.00
Grand total	26,751.36

Upon this report being made, Colonel Haynie ordered an assessment of this amount to be levied upon the rebel sympathizers in and about Henderson, which action was approved at the headquarters of the district of Jackson, in the Department of Tennessee, Brigadier-General Sullivan commanding, on the 12th day of December, 1862; and an order bearing date on that day was issued from said last-named headquarters directing the collection of the tax.

Colonel Haynie proceeded in the execution of the order, and collected of the said assessment the sum of $23,325.16, leaving a deficit of $3,426.20 not collected, by reason of the absence of the persons against whom the same was assessed. And thereafter, but at what precise date does not appear, Col. W. W. Sanford, Forty-eighth Illinois Volunteer Infantry, commanding post at Bethel, made an additional and supplemental assessment for $4,326.20, to make up such deficit; and of this amount there was collected $4,026.20, making the total amount collected to repair losses and damages sustained by said raid $27,351.36; all of which sum was paid by the persons now asking relief by this petition.

[illegible]ts to re-imbursement by such levy and assessment
uary, 1863, ordered the proceeds of such assessment and e
to the Provost-Marshal-General. And it appears by the
in denying the right of private claimants to re-imbursemen
raid out of this fund was approved by the Secretary of war,
by General M. C. Meigs; which report maintains the la
isted to levy and collect an assessment to pay private los
general commanding; but as against such general's consti
purpose no right whatever could accrue to a private claim

The logical sequence from these facts, and this declara
General Grant of his orders, seems to be, that the subord
the orders of the commanding general, should have made
losses sustained by the Government, viz:

For cotton burned belonging to the United States.....
Arms and camp equipage belonging to the United States..

Had the Government rebuilt or repaired the injury to tl
essential for their use of it, that also should be included a
ment; but the evidence shows that the railway company
their own expense.

Deducting this amount, for which the assessment was a
amount collected, there remains a balance of $22,271.26 ta
under a misconstruction of the order of the commanding ge
own action and the evidence of an officer of his staff.

This committee have maintained, and still adhere to the
liable for the willful torts of its soldiery.

But was this assessment a tort, within the meaning of s
trine? It is submitted that this wrong is clearly without
sessment was collected by an officer of high rank, command
the execution of an office giving him colorable authority,
act he did; and that act was ratified by the general comma
by not ordering restitution when the excessive assessment

But if the reasoning on this point may be deemed questi
facts another and complete answer to the application of t
shows to an absolute certainty that of the money so collect
by the United States to its use, knowing the source from wl
the remainder of the sum, $4,026, by all reasonable presump
to the use of the Government. And the committee is so con
trary conclusion would compel us to impeach the integrit
fell before Vicksburg without a stain upon his citizen or sol

The law of the case, then, may be stated to be, that if
Government, committed a tort originally, it was approved l
ernment, when it knowingly accepted the benefits of the to
ceedings by way of confiscation or condemnation have ov
persons so assessed of their right in the [illegible]

HIRAM JOHNSON ET AL.

February 27, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Thomas, from the Committee on War Claims, submitted the following

VIEWS OF THE MINORITY:

[To accompany bill H. R. 1610.]

The undersigned, a minority of the Committee on War Claims, disagreeing with the views of the majority, submit their reasons for such disagreement.

This claim has been before both branches of Congress, and has been reported favorably several times.

Its origin was as peculiar as its varying fortunes have proved changeable. It grew out of the incidents of the late war, and is based upon a supposed state of facts which, if true, would ground it upon the clearest principles of law applicable to the case assumed to exist. But if it was established as contended by the claimants it would rest upon legal grounds alone without any peculiar equity to quicken the remedy of the supposed wrong.

The United States forces occupied the town of Henderson, Tenn., in the fall of 1862, and that particular locality was at the time destitute of any lawful government except such as pertained to military authority War was flagrant at that time, and the commanding officers of the United States Army exercised control over that neighborhood except in so far as the rebel forces were able to dispute their right to rule.

In the month of November of that year, a rebel military force made a somewhat successful raid on the Union troops stationed at Henderson, and captured and destroyed a quantity of property belonging to the United States Government, and also a greater amount which belonged to certain private parties of undoubted loyalty.

Col. J. N. Haynie, of the Forty-eighth Regiment Illinois Volunteers, was in command of the post at that place, and immediately took cognizance of the rebel raid, as appears from the following military order, and proceedings thereunder, as reported to his superior officer:

Headquarters Post of Bethel,
Bethel, Tenn., December 9, 1862.

T. H. Harris,
A. A. General, Headquarters District of Jackson:

Sir: I have to report that on the 2d day of December I issued the following order

[Special Orders No. 73.]

Headquarters Post of Bethel,
Bethel, Tenn., December 2, 1862.

Capt. William J. Stevenson, Abner Smith, Forty-eighth Regiment, and Capt. L. W. Moore, Forty-ninth Illinois Volunteers, are hereby appointed a commission to meet

The undersigned commission appointed to inve
in the late rebel raid upon Henderson, Tenn., on
spectfully report that they find the amount of dam

Cotton burned of John Aldredge and Smith J. Pat
Cotton burned of W. D. Silver .....
Cotton burned of Willis N. Arnold.....
Cotton burned of the United States.....
Water-tank, Mobile and Ohio Railroad .....
Enfield rifles, Company B, Forty-ninth Illinois Vol
Camp equipage, Company B, Forty-ninth Illinois V
Depot-house, property of Mobile and Ohio Railroad

The commission find that the owners of the prope
the United States.

All of which is respectfully submitted.

Captain Company B,

Company G,

Company E,

Colonel Fortie

In order to pay off the amount thus adjud
citizens named, and of the United States—

The commission convened under Special
following list of names, and amount to be a
lows:

H. Johnson .....
Stephen M. Johnson .....
D. J. Franklin.....
Josiah Franklin.....
Nat. Buchley .....
John Tull.....
Elias Bray.....
Dr. Johnson .....
Allen K. Jones .....
Harrison Trice.....

R. J. Barham	$815.00
W. A. Brummer	1,630.00
John D. Smith	326.00
A. B. Crook	326.00
Daniel McCollum	326.00
Jeff. Jones	163.00
James Hendix	195.60
Ledbether	195.60
Thomas McGill	195.60
William Ozier	652.00
Elijah Bonds	326.00
John E. Cothram	652.00
Frank Corothron	391.20
James Corothron	163.00
S. E. Grider	163.00
Richard L. Hendrix	391.20
Silas Grider	163.00
	26,751.36

These persons were rebels and rebel sympathizers. They were unquestionably disloyal to the Government of the United States.

And the following order was issued to enforce the collection of the foregoing assessments:

[Special Order No. 15.—Extract.]

HEADQUARTERS DISTRICT OF JACKSON,
THIRTEENTH ARMY CORPS, DEPARTMENT OF THE TENNESSEE,
Jackson, Tenn., December 12, 1862.

* * * * * * *

4. The commission appointed by Special Order No. 73, headquarters post of Bethel, district of Jackson, Department of the Tennessee, December 2, 1862, to investigate the nature and amount of damage done by the guerilla raid on Henderson Station, on November 25, 1862, having reported that the property destroyed belonged to the United States and to loyal citizens, of the value of $26,751.36, and the said sum having been assessed by Col. J. M. Haynie, commanding post of Bethel, on certain sympathizers and co-operators with the rebellion, Col. J. M. Haynie is ordered to immediately proceed to collect the said sum of $26,751.36 from said disloyal citizens so assessed, and pay over the amount to Col. J. D. Webster, Superintendent U. S. M. R. R.

By order of Brig. Gen. Jer. C. Sullivan.

F. H. HARRIS,
Assistant Adjutant-General.

And it appears that there were collected under Special Order No. 15, headquarters district of Jackson, 1862, from the persons assessed, the following amounts:

H. Johnston, January 9, 1863	$815.00
Stephen M. Johnston, January 9, 1863	815.00
D. J. Franklin, January 10, 1863	163.00
Jos. Franklin, January 23, 1863	195.60
Nat. Buchley, January 1, 1863	326.00
John Tull, January 1, 1863	391.20
Elias Bray, January 12, 1863	489.00
S. L. Ross, January 13, 1863	1,630.00
John M. Hart, sr., January 13, 1863	652.00
W. A. Brummer, January 29, 1863	1,000.00
John D. Smith, January 1, 1863	326.00
A. B. Crook, January 14, 1863	326.00
Elijah Bonds, January 14, 1863	326.00
John E. Cothnaw, February 3, 1863	652.00
William Hall, February 3, 1863	652.00
Frank Cathran, January 3, 1863	391.20
James Cathrow, January 3, 1863	163.00
Dr. Johnston, January 3, 1863	195.60
Allen K. Jones, January 14, 1863	652.00
Harrison Price, February 7, 1863	326.00
Jerry Crook, sr., February 13, 1863	652.00
Willis Arnold, sr. (date unknown)	6,506.76

Total amount collected.....

Of this amount I have paid over to Col. J. D. Webster, $
To General J. C. Sullivan, January 15, 1863 .....
February 4, Maj. M. Smith.....
March 3, Lieut. Col. M. Smith.....

Total.....

The total amount of assessment was.....
The total amount of said collected .....

Leaving this amount not collected.....

The parties who this amount not collected is assessed ag
and have no property at home that can be made pay the
To make this amount good on the original assessment I o
assessed on these persons who had not been assessed, but
rebel co-operators and sympathizers, which was done, and
collected. Shall I return this amount to the persons from
take up the receipts given, or shall I pay it over to Lieut.
ance not yet collected can be got in a short time, as the p
have most all made their arrangements to get the money.
Respectfully submitted.

Colonel Forty-eighth Illinois Volunteer Infc

Capt. F. H. HARRIS, A. A. G.,
Headquarters District of Jackson.

We find this matter further explained in the G
2, 1877, as follows:

The intention in ordering that money to be paid to Colo
him custodian of the fund for the indemnification of the Uni
and other loyal citizens who had suffered by the raid on I
Colonel Sanford brought the first installment of the collect
Webster was not in the city, and Colonel Sanford paid ov
Sullivan, and received his receipt for the same. General S
money for a short time, became nervous on account of hav
for it, and telegraphed to Major-General Grant for orders
should make of it. General Grant replied to General Sulli
the money over to the provost-marshal at Jackson, Tenn., M
first sum of $8,388.20. The next payments were made to M
ford under General Sullivan's orders and orders from Major-
ment was made to Colonel Webster, for the reason that the
for arms, camp and garrison equipage, and it was anno
was the proper custodian of the

This has reference to the money which had been assessed and collected as already shown, for the purpose of re-imbursing the Government and the loyal citizens mentioned for their losses sustained by the rebel raid on the 25th of November, 1862.

To complete the military history of this matter it is necessary to add a few other orders.

[Special Order No. 64.]

HEADQUARTERS POST, BETHEL, TENN.

It having come to the knowledge of these headquarters that some of the persons assessed under Special Order No. 15, district of Jackson, are not at home, but are said to be in the rebel army, and as their property is in such a condition that the amounts assessed can not be collected from them, and as the brigadier-general commanding has ordered a reduction of assessment in form of some of the other assessed parties, it is therefore ordered that Maj. W. J. Stephenson, commanding at Henderson, proceed to assess the amount caused by the above failure to pay amount reduction of assessment upon such other disloyal and rebel sympathizers as may be hereafter named, to wit:

Sol. G. Thomasson	$300.00
Tison Maness (paid $545 March 4)	700.00
Keton M. Jones, paid March 2	450.00
John Robinson, paid February 16, 1863	300.00
Stephen Massengall, paid February 14, 1863	150.00
William Walker, sr., paid February 14, 1863	150.00
William H. Bond, paid February 18, 1863	150.00
A. S. Rodgers, paid February 20, 1863	426.20
Frank Ballard, paid February 28, 1863	300.00
Caleb McKnight, paid February 28, 1863	250.00
Hugh McKnight, paid February 10, 1863	250.00
William Shrink, paid February 27, 1863	250.00
James Thomas, paid March 3, 1863	250.00
John G. Smith, paid February 20, 1863	100.00
Total	4,326.20

The amount he will assess will be $4,326.20, which he will so distribute as to make as many disloyal citizens bear the assessment as possible, taking the same percentage as on previous assessments, sending to these headquarters the names of the persons he selects and the amount assessed on each one. He will use the utmost dispatch in the matter, as it must be closed up at once.

By order

WM. W. SANFORD,
Colonel Forty-eighth Illinois, Commanding Post.

To carry out the foregoing the following was issued:

[Special Order No. 87.]

HEADQUARTERS, POST OF BETHEL,
Bethel, Tenn., December 14, 1862.

In obedience to Special Order No. 15, dated Headquarters District of Jackson, Tenn., December 12, 1862, Capt. W. J. Stephenson, Forty-eighth Regiment Illinois Volunteers, commanding United States forces at Henderson Station (Mobile and Ohio Railroad), is hereby ordered to collect from the following-named persons, citizens of Tennessee and sympathizers and co-operators with the rebellion, the several sums set opposite their names, in order to defray damage done by the late rebel raid upon that place:

H. Johnson, paid January 9, 1863	$815.00
Stephen M. Johnson, paid January 9, 1863	815.00
D. J. Franklin, paid January 10, 1863	163.00
Josiah Franklin, paid January 23, 1863	195.60
Nat Buckley, paid January 1, 1863	326.00
John Tull, paid January 1, 1863	391.20
Elias Bray, paid January 12, 1863	489.00
Dr. Johnson, paid January 3, 1863	195.60
Allen K. Jones, paid January 14, 1863	652.00
Harrison Irvine, paid January 7, 1863	326.00
Jeremiah Crook, sr., paid January 13, 1863	652.00
Willis Arnold, sr	6,506.76

Arch. McClorts, paid January 13, 1863	$489.00
G. L. Ross, paid January 18, 1863	1,630.00
S. L. Ross, paid January 13, 1863	1,630.00
John M. Hart, sr., paid January 13, 1863	652.00
R. J. Barham	815.00
W. A. Brummer, paid January 29 (reduced to $1 000)	1,630.00
John D. Smith, paid January 1, 1863	326.00
A. B. Crook, paid January 14, 1863	326.00
Daniel McCollum, paid February 17, 1863	326.00
Jeff. Jones, paid January 19	163.00
James Hendrix, paid January 14, 1863	195.60
—— Ledbether, paid January 10, 1863	195.60
Thomas McGill, paid January 3, 1863	195.60
William Osier, paid January 19, 1863	652.00
Elijah Bonds, paid January 14, 1863	326.00
John L. Cottman, paid January 3, 1863	652.00
William Hall, paid January 3, 1863	652.00
Carroll Beavers, paid January 14, 1863	652.00
Thomas Crook	326.00
Thomas or John West, paid January 3, 1863	815.00
James Clifford, paid January 3, 1863	326.00
O. F. Hendrix, paid January 3, 1863	978.00
Frank Couthron, paid January 3, 1863	391.20
James Couthron, paid January 3, 1863	163.00
S. E. Grider, paid January 19, 1863	163.00
Rich. L. Hendrix	391.20
Silas Grider, paid January 19, 1863	163.00
	26,751.36

Captain Stephenson will send to each of the above-named parties the following notice to appear and pay over to him the several amounts assessed to them within ten days:

"SIR: You are hereby notified that, pursuant to Special Order No. 15, from district headquarters, Brig. Gen. Jer. C. Sullivan, commanding, you have been assessed to pay the sum of ——— dollars, the same being your proportion of the damages resulting to the Government of the United States and to the property of loyal citizens by the late rebel raid on Henderson Station. You will pay the amount to Capt. W. J. Stephenson, commanding at Henderson, within ten days from this date, and take duplicate receipts for said money. One you will forward to headquarters, post of Bethel, Tenn.; the other you will keep.

"By order

"WILLIAM J. STEPHEN,
"*Captain, Commanding Post, Henderson Station.*

"—— ———,
"*Assistant Adjutant.*"

Captain Stephenson will make report and pay over from time to time all moneys so collected to these headquarters.

By order:

J. N. HAYNE,
Colonel Forty-eighth Regiment Illinois Volunteers, Commanding Post.

W. BEDFORD,
Post-Adjutant.

This concludes the historical facts, which are undisputed; and in order to properly understand what is to follow, it is deemed best to make a more summary statement of the points established.

First, it is clearly shown that there was a rebel raid on the United States military post at Henderson, Tenn., on the 25th of November, 1862, and that the raiding party captured and destroyed property as follows:

Cotton belonging to the United States	$1,900.00
Arms and camp equipage belonging to the United States	3,180.00
Total belonging to the United States	5,080.00

Cotton belonging to John Aldridge and Smith J. Patterson	9,606.36
Cotton belonging to W. DeSilver	2,565.00
Cotton belonging to Willis N. Arnold	6,000.00
Total belonging to loyal citizens	18,171.36
Depot-house, property of Mobile and Ohio Railroad	2,000.00
Water-tank, Mobile and Ohio Railroad	1,500.00
Total belonging to railroad	3,500.00
Putting these sums together gives a grand total of	26,751.36

damages assessessed by the military authorities for the purpose of reimbursing the Government and the citizens as already explained.

Secondly. It is equally clear that the sum of $27,351.36 was collected from disloyal citizens to pay the several items of damage mentioned. This was in excess of the amount required in the sum of $480. It was all collected, and the parties on whom assessments had been made as hereinbefore shown given receipts for the several sums paid by them.

Thirdly. It appears that the principal part of this money was turned over to the provost-marshal-general of the United States, by direction of General Grant, and that it is now in the Treasury, less the sum of $9,606.36 paid to Aldridge and Patterson by reason of a special act of Congress passed March 3, 1875, and approved by President Grant, of that date.

As already stated, the claim of Hiram Johnson and others, as provided for in this bill, has been reported favorably in both branches of Congress, and passed the House of Representatives on the 17th day of May, 1880. These favorable reports, and the action by the House of Representatives in passing the bill, seem to have been the result of a misapprehension of the facts of the case. For instance, the Committee on War Claims, in reporting the bill to the Forty-sixth Congress, makes the following statement:

At the time of the appraisal of the damages and of the levying and collecting these assessments it was supposed to be under and in execution of an order of General Grant, then commanding the troops in that department. But it appears from the papers filed that General Grant disavowed the construction put upon his general orders by the local officers, and declared the purpose and intent of his general order to be that reprisal should be made by way of levy and assessment in case of raids within our lines like the one at Henderson, only to repay such losses as the Government might sustain in its property thereby, and he refused to recognize the right of private claimants to reimbursement by such levy and assessment; and on the 23d day of January, 1863, ordered the proceeds of such assessment and collection to be turned over to the provost-marshal-general. And it appears by the papers filed that his action in denying the right of private claimants to reimbursement for losses sustained by the raid out of this fund was approved by the Secretary of War, on the report made thereon by Gen. M. C. Meigs; which report maintains the law to be that the power existed to levy and collect an assessment to pay private losses in the discretion of the general commanding; but as against such general's construction of his own order and purpose, no right whatever could accrue to a private claimant for reimbursement.

The logical sequence from these facts, and this declaration and construction by General Grant of his orders, seems to be that the subordinates, in the execution of the orders of the commanding general, should have made an assessment only for the losses sustained by the Government, viz:

For cotton burned belonging to the United States	$1,900
Arms and camp equipage belonging to the United States	3,180
	5,080

If the facts stated were actually established by the papers on file and the testimony before the present committee it would most likely concur with the reasoning and conclusions of its predecessor.

But undersigned do not find these facts established by the testimony presented for their consideration.

On the contrary, there is nothing in the present record to authorize the assumption that "the levying and collecting these assessments was supposed to be under and in execution of an order of General Grant," except an unofficial letter from William S. Hillyer, written from memory only, some eighteen years after the transaction. Nor does it appear that General Grant desired "the right of private claimants to reimbursement for losses sustained by the raid out of this fund," except from the same letter; and it is worthy of note that this letter was written, in part at least, to explain some imputation against the writer.

The papers on file do not show that General Grant ever issued an order bearing special and direct reference to these several proceedings until after the assessments had been made and the money collected. The testimony shows that the proceeding originated with Colonel Haynie, commanding the post at Henderson, and afterwards received the approval of Brigadier-General Sullivan, commanding the district of Jackson, Sixteenth Army Corps, Department of the Tennessee. And the favorable report made to the Forty-sixth Congress in this case recognizes what it is conceived is the true rule of law applicable to the existing conditions at the time of the assessment and collection of the money in controversy. That report says:

> The right of the military commandant in time of war to order and enforce assessments upon hostile communities by way of reprisal, and to prevent the giving information and encouragement to enemies outside his lines by enemy sympathizers within his lines, is well settled and affirmed by all writers upon the laws of war, and is a most salutary check upon predatory incursions, by making the friends of those who commit the damage bear the brunt of the injury suffered.

This is conceded to be the law of the case, and it is unnecessary to elaborate the legal argument; yet it is proper to say that the several orders having been issued by Colonel Haynie and General Sullivan, "officers of high rank," and the several steps taken thereunder, as hereinbefore shown, it follows as a "logical sequence from these facts," and a legal deduction from the law, that the assessment and collection of this money was not "a tort" in any sense whatever, but a legitimate military proceeding for a lawful purpose, and the fund should be applied to the uses for which it was intended.

It is true the superior officers of Haynie and Sullivan could have revoked or countermanded their orders, but this was not done, as assumed in the reports heretofore made on this claim. In the absence of the disapproval of the action of these inferior officers by their superiors every presumption arises in favor of their ratification of all that was done in the premises. And if this were not so, if these presumptions did not arise, the record furnishes ample testimony to satisfy this committee that the action of Colonel Haynie and General Sullivan received the affirmative approval of General Grant. It will be remembered that on the 23d of January, 1863, he directed this money to be accounted to the Provost-Marshal General, and we find a letter on file in the case of Willis N. Arnold, once before this committee, and whose bill at one time was considered in conjunction with the present bill for the relief of Hiram Johnson and others. This letter bears date "Washington, D. C., June 26, 1866," and was written by General Adam Badeau, then on General Grant's staff. It was at a period much nearer the time these military proceedings were had, and must be taken as a correct interpretation of the whole proceeding on the part of General Grant and his subordinates. It is in reply to Willis N. Arnold, who had called on him

for aid in his case, which was before Congress. The full text of that letter is as follows:

In reply to your communication of June 11, addressed to Lieutenant-General Grant, and requesting that you, as a loyal citizen, might be remunerated for losses sustained by you at the burning of Henderson, Tenn., General Grant directs me to inform you that an assessment was made by General Sullivan by his orders upon the property of disloyal citizens for the purpose of remunerating the sufferers at Henderson, and that since General Sullivan has been mustered out of the service he has informed General Grant that a certain amount of such assessment remains in his hands.

General Grant advised General Sullivan to turn over the said sum to the authori ties, so that it might be devoted to the uses for which it was collected.

On the 16th of February, 1882, General Badeau examined this letter and indorsed it as follows:

The above letter was written by me June 26, 1866, together with the interlinea tions, while I was serving on the staff of Lieutenant-General Grant.

This not only negatives the assumption that the assessment and collection of money by Colonel Haynie and General Sullivan for the purpose of re-imbursing loyal citizens who suffered by the rebel raid on Henderson was disapproved by General Grant, but it clearly shows that General Grant fully approved of the proceeding, if he did not, in fact, directly authorize it, and that he desired the money to " be devoted to the uses for which it was collected."

And this view of the matter is further emphasized by the fact that he approved the special act of Congress, passed while he was President, to pay Aldridge, one of the loyal citizens for whose benefit this assessment and collection was made, out of the funds thus collected and turned into the Treasury. The undersigned have felt it their duty to detail the several matters of fact disclosed in the official and unofficial testimony before them, and to interpret the whole case in the light of a letter from General Grant, on file with the papers, dated February 20, 1882.

Among other things, General Grant says in this letter bearing on the Henderson raid—

I have no recollection of loyal citizens having been molested at that time, or of having ordered collections in their behalf, but whatever the record may be, made at the time, it may be taken as the exact facts. What I here state is simply from recollection.

He had previously stated in his letter that he had "no records or papers relating to the war" in his possession.

The undersigned therefore find that the record clearly establishes the fact that loyal citizens were molested; that their property was destroyed; that its value was adjudged by a proper military commission; that assessments were made on disloyal persons to re-imburse this loss; that the money was collected; that it was turned into the Treasury to " be devoted to the uses for which it was collected;" that the said money is now in the Treasury, less the amount paid to Aldridge and Patterson, and that there is no legal or equitable right in any one of the claimants mentioned in this bill to any part of said fund; but that, having been properly assessed and collected for a specific purpose, it should be devoted to that use or held in the Treasury as an indemnity to the United States.

Although the national authority exercised the right of reprisal in but few instances during the late war, yet where, as in this case, the right was enforced, and the Government through its " officers of high rank " elected to ratify and carry out the proceeding, there is no reason why

those for whose benefit it was intended should now be deprived of the indemnity due them under the action had in their behalf.

The undersigned specially call attention to the fact that the bill as reported by the majority does not deduct the amount paid to Aldridge and Patterson of over $7,000, and if the bill passes it will be that much loss to the Treasury; but in our opinion the bill should not pass for any amount.

Upon these grounds of objection the minority recommend that the bill do not pass.

O. B. THOMAS.
W. H. GEST.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 15.

CHIPPEWA INDIANS, LAKE SUPERIOR.

JANUARY 21, 1890.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

Mr. PERKINS, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. Res. 79.]

The Committee on Indian Affairs, to whom was referred a letter from the Acting Secretary of the Treasury, transmitting with accompanying papers a "Letter from the Secretary of the Interior relative to an immediate appropriation for the relief of the Chippewa Indians of Lake Superior," copies of which, together with other communications bearing upon the same subject, are herewith submitted as follows:

TREASURY DEPARTMENT, *January* 10, 1890.

SIR: I have the honor to inclose herewith, for the consideration of Congress, copy of a communication from the Secretary of the Interior of the 9th instant, and accompanying papers, in relation to an appropriation of $75,000 for the immediate relief of the Chippewa Indians of Lake Superior.

Respectfully yours,

GEO. S. BATCHELLER,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
Washington, January 9, 1890.

SIR: I have the honor to transmit herewith a communication received from the Commissioner of Indian Affairs, dated the 9th instant, in which he incloses for the action of the Congress a form of a joint resolution providing an appropriation in the sum of $75,000 for the immediate relief of the Chippewas of Lake Superior, located at the La Pointe Agency, in Wisconsin.

The recommendation of the Commissioner meets the approval of this Department, and would respectfully request that the subject may receive the favorable action of the Congress.

I have the honor to be, very respectfully,

GEO. CHANDLER,
Acting Secretary.

The SECRETARY OF THE TREASURY.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 9, 1890.

SIR: I have the honor to submit herewith a communication from M. A. Leahy, Indian agent at La Pointe Agency, Wis., dated the 4th instant, submitting estimates of appropriations required for subsisting and clothing the Chippewas of Lake Superior for the remainder of the current fiscal year.

Owing to the fact that all timber sales have been suspended at the said agency, these Indians are left without the means of support. Heretofore they have supported themselves by contracting for cutting and selling the timber on the several reservations, but owing to the irregularities of last year, in the cutting or contracting for cutting, no contracts were authorized to be made this winter. They have no other means to support themselves. During the winter of 1887-'88 the Indians of the La Pointe Agency received $428,000 for timber cut upon their reservations, and during the winter of 1888-'89, $143,000.

In the opinion of this office, an appropriation of $75,000 will be sufficient to relieve their necessities and keep them from suffering, and with this end in view, I recommend that the Congress be requested to provide an appropriation in the sum named, by joint resolution, with the proviso that authority be granted to expend said sum in the discretion of the Department, either in open market or by contract, and with a further proviso that the said sum shall be re-imbursed to the United States out of any future receipts from sale of land or of timber cut upon their reservations.

I inclose herewith a draught of the proposed joint resolution, together with copies of the estimates submitted by Agent Leahy.

Very respectfully,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

UNITED STATES INDIAN SERVICE,
La Pointe Agency, Ashland, Wis., January 4, 1890.

SIR: In reply to Department letter "F" of the 5th ultimo, I have the honor to transmit herewith estimates for the subsistence and clothing of the Chippewa Indians of Lake Superior for the remainder of the fiscal year ending June 30, 1890.

The estimate for rations is made from the 8th of January to the 30th of June, inclusive, one hundred and seventy-four days, and the prices attached are the lowest I have been able to secure for goods delivered on the several reservations.

The rations are estimated for all the bands of the agency except the Bois Forte and the Grand Portage Indians, which are already partly supplied.

Blankets are estimated for all the Indians of the agency, less two hundred and fifty already provided for the Bois Fortes.

I also submit an estimate for thirty days' rations for the Red Cliff, Bad River, Lac Court Oriellles, and Fond du Lac Indians, numbering three thousand one hundred and eighty-eight persons.

The immediate wants of the other bands of this agency are supplied.

The thirty days' rations referred to should be provided at once, as many of these Indians are in a starving condition, especially the women and children, the aged and otherwise feeble.

There is a pressing need of the blankets and clothing to protect them from the rigors of the severe winter weather which is already upon them, and they should be provided with as little delay as practicable.

Very respectfully,

M. A. LEAHY,
U. S. Indian Agent.

Hon. T. J. MORGAN,
Commissioner of Indian Affairs,
Washington, D. C.

Beg leave to report that they have had the same under consideration and report the following joint resolution and recommend its passage:

[H. Res. 79.]

Joint resolution providing for an appropriation for the relief of certain Chippewa Indians of the La Pointe Agency, Wis.

Whereas it has been the practice of the Chippewa Indians of the La Pointe Agency, for a number of years, to contract for cutting and selling timber on their reservation to provide food and other necessaries of life; and

Whereas permission to do so has been denied them by the Interior Department during the present winter, until proper legislation can be had on the subject; and

Whereas the failure to contract for cutting timber has already resulted in suffering, and some means must be provided for immediate relief: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of $75,000 be, and hereby is, appropriated out of any moneys in the Treasury not otherwise appropriated, to be immediately available, for the purpose of purchasing food and clothing for the Indians of the La Pointe Agency, and that in expending said money the Secretary of the Interior is authorized, to make the purchases, in his discretion, either under contract or in open market: *Provided, however,* That the amount hereby appropriated shall be re-imbursed to the United States out of the moneys hereafter realized from the sale of land, or timber, of such of the bands of Indians as have received the benefit of this appropriation.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 16.

OBSTRUCTIONS IN THE MISSOURI AND COLUMBIA RIVERS.

JANUARY 22, 1890.—Ordered to be printed.

Mr. GROSVENOR, from the Committee on Rivers and Harbors submitted the following

REPORT:

[To accompany S. Res. 37.]

The Committee on Rivers and Harbors, to whom was referred Senate Joint Resolution No. 37, has had the same under consideration, and hereby report it back, with an amendment, in the nature of a substitute.

The failure of the river and harbor appropriation bill for 1889-'90 has left these two important rivers in such condition, by reason of the presence of snags and other obstructions, as to greatly imperil navigation in the one, the Columbia, and to cause a suspension of navigation in the Missouri River between the city of St. Joseph and the mouth of the river, a line of steam-boats being constructed at Kansas City especially for this trade—the Missouri River trade—finding it impossible to secure insurance upon boats or cargoes by reason of the presence of unusual numbers of snags and other obstructions. The operation of snag-boats upon Western waters is of such character as to render it impossible to always ascertain the amounts of appropriation necessary to continue the work during the season, owing to the fact that in some years a much larger amount, and much more dangerous character, of obstructions are moved and deposited in the river. It is believed that, as a general thing, the expense of the snag-boat service on the Western waters should be made a permanent charge upon the contingent fund of the War Department, to the end that there should never, by reason of the failure of the river and harbor bill, be a time when the snag-boat service be inoperative by reason of the want of an appropriation. But in the present case your committee is of the opinion that a special appropriation is fully justified by the special exigencies which exist in these two rivers, and

Therefore your committee recommend that the joint resolution be amended as provided for in this report, and so amended be passed.

Strike out all after the word "whereas" of the original resolution, and insert

"The amounts appropriated by Congress in the act of 1888 for the improvement of rivers and harbors for the removal of snags and other obstructions from the Missouri River and the Columbia River, to be expended under the control of the Missouri River Commission and of the Chief of Engineers of the War Department, have been in each case exhausted, and there being no funds remaining available for the purposes aforesaid, and

"Whereas it is important to the navigation of said rivers that certain snags and

obstructions be removed at once, to the end that navigation may not be suspended by reason of said obstructions: Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the sum of seventy-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated, which shall be expended under the supervision and direction of the Missouri River Commission, in the removal of snags and other obstructions to the navigation of said river between Saint Joseph, Missouri, and the mouth of said river; and the like sum of seventy-five thousand dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be expended under the supervision and direction of the Secretary of War, in the removal of snags and other obstructions to the navigation of the Columbia River in Oregon, said work to be commenced so soon as the rivers aforesaid and their freedom from ice will permit, and to be continued until completed, and said sum of one hundred and fifty thousand dollars is hereby made immediately available for the purposes aforesaid."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 17.

ISSUE OF NOTES TO NATIONAL BANKING ASSOCIATIONS.

JANUARY 23, 1890.—Recommitted to the Committee on Banking and Currency and ordered to be printed.

Mr. DORSEY, from the Committee on Banking and Currency, submitted the following

REPORT:

[To accompany substitute for H. R. 537.]

The Committee on Banking and Currency, to whom was referred the bill (H. R. 537) to provide for the issue of circulating notes to national banking associations, report the following substitute therefor, and respectfully recommend the passage thereof:

A SUBSTITUTE for bill No. 537—To provide for the issue of circulating notes to national banking associations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That upon any deposit already or hereafter made of any United States bonds bearing interest in the manner required by law, any national banking association making the same shall be entitled to receive from the Comptroller of the Currency circulating notes of different denominations, in blank, registered and countersigned as provided by law, not exceeding in the whole amount the par value of the bonds deposited: *Provided,* That at no time shall the total amount of such notes issued to any such association exceed the amount at such time actually paid in of its capital stock. And that all laws and parts of laws inconsistent with the provisions of this act be, and the same are hereby, repealed.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 18.

SCHOOL AND UNIVERSITY LANDS IN ARIZONA.

JANUARY 23, 1890.—Recommitted to the Committee on the Territories and ordered to be printed.

Mr. DORSEY, from the Committee on the Territories, submitted the following

REPORT:

[To accompany bill H. R. 3369.]

The Committee on the Territories having considered the bill (H. R. 3369), "To authorize the leasing of school and university lands in the Territory of Arizona, and for other purposes," respectfully recommend the passage of the same.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 19.

CHARLES B. SMITH vs. JAMES M. JACKSON.

JANUARY 23, 1890.—Recommitted to the Committee on Elections and ordered to be printed.

Mr. DALZELL, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, having had under consideration the contested-election case of Charles B. Smith, contestant, against James M. Jackson, contestee, from the fourth district of West Virginia, submit the following report:

At an election held on the 6th day of November, 1888, James M. Jackson and Charles B. Smith were the Democratic and Republican candidates, respectively, for election as Representative to the Fifty-first Congress from the Fourth Congressional district of West Virginia. The former obtained the governor's certificate and now holds the seat. His right to either is contested by Smith, who claims that he was entitled to the certificate in the first instance, and according to the votes legally cast is now entitled to the seat.

The issue to be determined by the committee involves both these claims.

Was the contestant elected upon the face of the returns?

It would seem that the contestee originally conceded that he was. Contemporaneously with the issue by the governor of a certificate of election to the contestee he made public a proclamation or declaration not called for by any provision of law, the purpose of which evidently was to justify his action in issuing the certificate. (See Record, p. 866.)

In this proclamation the governor says:

> J. M. Jackson, who was a candidate for Representative in Congress for the Fourth Congressional district, alleges that at two polling places at least, in Putnam County, the election was held at other and different places than those prescribed by law, and that motions were made before said commissioners to exclude these polls from the count, which the commissioners refused to do, and that the majority of 171 votes in said county in favor of C. B. Smith for said office is made up in part by the returns from said two polling places. It is insisted by said Jackson that under our statutes it is in the power of the governor to go behind the returns and inquire into the proceedings of the county commissioners. On the contrary it is insisted by said Smith, through his counsel, that "the intention of the legislature was to withdraw from the governor all power over the election returns whatsoever, except the certifying of what appeared in the office of the executive department of the State."

The governor's decision was that he could not go behind the returns; but it is very clear, from his statement, that prior to the issue of any certificate, the contestee was of opinion, upon the face of the returns, that the certificate must be issued to the contestant.

The subsequent action of the contestee is consistent with and in affirmance of his original concession.

The contestant in his notice of contest (Record, p. 22) offered to rest his claim to office on the face of the returns. The issue thus tendered the contestee declined, adhering evidently to his original opinion that, tested by that standard, he had no title to the seat he now holds.

It is very plain to the committee that the contestant was elected upon the face of the returns and entitled to the certificate from the governor.

Under the laws of West Virginia (Code, sec. 22, ch. 3) it is made the duty of the commissioners of the county courts in each Congressional district, to transmit to the governor a certificate of the result of the election within their respective counties, "and in the said certificate shall be set forth, according to the truth, the full name of every person voted for, and *in words at length* the number of votes he received for any office."

The Fourth Congressional district is constituted of twelve counties, and the aggregate vote appearing from the certificates therefrom transmitted to the governor in accordance with law was, as contestant claims—

	Votes.
For Jackson	19,825
For Smith	19,837

Showing a plurality for Smith of 12 votes According to this statement Smith, and not Jackson, was entitled to the governor's certificate of election.

But the count as made by the governor was—

	Votes.
For Jackson	19,837
For Smith	19,834

Showing a plurality for Jackson of 3 votes.

The differences between the county returns and the governor's count are confined to three counties, viz: Ritchie, Calhoun, and Pleasants.

The commissioners of Ritchie County sent two certificates. One, dated November 13, shows—

	Votes.
For Smith	1,972
For Jackson	1,405

The second, dated November 14, shows—

	Votes.
For Smith	1,973
For Jackson	1,403

The second certificate correctly represented the result of a recount of the votes, made at the instance of the contestee. The governor accepted the first and rejected the second certificate, and thus took away from Smith one vote and added to Jackson two votes.

The law of West Virginia with respect to a count and recount of returns is as follows (Code, sec. 21, ch. 3):

The commissioners of the county court shall convene in special session at the court-house on the fifth day (Sundays excepted) after every election held in their county, or in any district thereof, and the officers in whose custody the ballots, poll-books, and certificates have been placed shall lay the same before them for examination. They may, if deemed necessary, require the attendance of any of the commissioners or canvassers, or other officers or persons present at the election, to answer questions under oath respecting the same, and may make such other orders as shall seem proper to procure correct returns and ascertain the true result of the said election in their county. They may adjourn from time to time, and when a majority of the commissioners is not present their meeting shall stand adjourned till the next

day, and so from day to day till a quorum be present. They shall, upon the demand of any candidate voted for at such election, open and examine any one or more of the sealed packages of ballots and recount the same, but in such case they shall seal up the same again, etc.

It seems from the second certificate from Ritchie County that the contestee was dissatisfied with the first count there made, and demanded, as he had a right to do, a recount. This certificate, so far as material, the law just quoted shows as follows:

The commissioners of the county court of Ritchie County, West Virginia, having carefully and impartially examined the returns of the election held in said county in each district thereof on the 6th day of November, 1888, upon a recount of the ballots on the demand of J. M. Jackson, candidate voted for at said election for the office of Representative in the Congress of the United States, do hereby certify that in said county for the office of Representative in the Congress of the United States for the Fourth Congressional district of West Virginia—

Charles B. Smith, of Wood County, received nineteen hundred and seventy-three (1,973) votes.

J. M. Jackson, of Wood County, received fourteen hundred and three (1,403) votes.

O. W. Smith received one vote.

Judge Jackson received one vote.

In witness whereof we, the said commissioners, have hereto signed our names this 14th day of November, A. D. 1888, &c.

This certificate the governor ignored altogether, and the contestee now seeks to justify his action by saying that upon the making of the original certificate the county court was *functus officio*, powerless even to correct an error; and that a recount can be had only when the demand therefor is made prior to the issue of a certificate. This contention is directly in the teeth of the contestee's own action in demanding the recount, and is not in the judgment of your committee tenable on any ground.

The manifest purpose of the law in providing for a recount is that errors may be corrected. There can be no recount until there has been a perfected count. Whether a recount shall be necessary can not be determined till the first count is finished. No provision is made in the law as to the time when the recount must be demanded. There is no statute of limitations on the subject. To hold that a recount must be demanded on the day of the original count leads to the manifest absurdity, of requiring the candidate to be present, in person or by proxy, in as many different places as there are county courts in his district at one and the same time. In the district in question there are twelve counties.

If the recount was lawful, as undoubtedly it was, so then was the certificate of its result, and the governor exceeded his powers in accepting the first and ignoring the second certificate from Ritchie County.

He committed a similar error with respect to Calhoun County.

The commissioners of that county also returned two certificates. The first, dated November 12, 1888, showed for Jackson 919 votes, for Smith, 630. The second, made to correct a clerical error, showed the same number of votes for Jackson, but 632 votes for Smith instead of 630, and is as follows:

(Record, p. 857.) At a regular session of the county court of Calhoun County, held at the Court House of said county on Monday, the 7th day of January, 1889, on motion of A. J. Barr, it is ordered by this court that the returns of the election held in this county on the 6th day of November, 1888, as certified by the county court, held on the 12th day of November, 1888, be corrected, it appearing to the court that there is a clerical error in the returns as certified, to wit: That the record of the result of said election for a Representative in the Congress of the United States shows that Charles B. Smith received six hundred and thirty votes, which should have been C. B. Smith received six hundred and thirty-two votes.

It is therefore ordered by this court that the record of this count be corrected, so as to show that C. B. Smith received six hundred and thirty-two votes, as shown on the face of the returns of said election, and that a copy of this order be certified to the governor of this State, and to C. B. Smith, at Parkersburg, W. Va.

The Governor ignored this second certificate and thus deprived Smith of two votes. He assigned no reason for his action, but counsel for contestee now seek to justify it on the grounds hereinbefore stated —that upon the making of the first certificate the county court was *functus officio*, and had no power to correct an error, however plain and palpable, after the certificate had been issued.

It has been held that where the judges of election discover a mistake upon a recount of the ballots, their supplemental return is entitled to be received (Archer *v.* Allen, Thirty-fourth Congress); and that errors, whether fraudulent or accidental, may be corrected at any time, even after certificate of election issued by the governor. (Butler *v.* Lahman, Thirty-seventh Congress; Morton *v.* Daily, Thirty-seventh Congress.)

It is believed that there is inherent in everybody charged with the ascertainment of the popular will, whether its functions be judicial or ministerial, the power to correct an error when discovered and to make its conclusions express the true will of the people as disclosed by their suffrages. And it is especially to be noted that there is no suggestion from any quarter that the certificates from Ritchie and Calhoun Counties, ignored by the governor, did not accurately show the exact number of votes legally cast for the respective candidates, while on the contrary it expressly appears that they did so show.

But the technicalities which unfortunately prevailed in the mind of the governor to defeat in part the true will of the voters in Ritchie and Calhoun Counties would not have affected the result had he stopped there, and they dwindle into insignificance when compared with the results of the strange mental process by which the returns from Pleasants County were perverted.

According to the returns from that county, Smith had received 697 votes and Jackson 802 votes. These 802 votes the governor raised to 812 by a most extraordinary feat of political legerdemain. We quote from his unauthorized proclamation or declaration to which we have heretofore referred, as follows.

The commissioners of Pleasants County certify as to J. M. Jackson's vote as follows: "J. M. Jackson received eight hundred and *twe* votes." The words and letters are too plain for any mistake. For the reasons heretofore given there is no authority to go behind the returns. The vote certified must be counted if enough appears to ascertain the meaning. In an action upon a note it was held: "There was no error in admitting the note sued on in evidence, because the amount thereof is written four *hund* and two and 50-100 dollars." (*Glenn* vs. *Porter*, 72 Ind., p. 525.)

So it has been held that the abbreviation in a declaration, "Damages one *thous* dollars" is not error. (1 W. L. J., Mich., 395.)

If enough appear to make the return intelligible it should be made so.

This can not be done without striking out one letter and inserting another, or by supplying the seemingly omitted letters. Acting upon the face of the paper the latter appears more in consonance with adjudged cases. The least number would give to said Jackson eight hundred and twelve votes. It will be so entered.

Thus the governor. It is difficult to treat this matter seriously. It seems like a farce to argue about it. It is hard to believe that any mature man, of ordinary intellect, and even to an extent honest, when dealing with the sacred right of suffrage could cheat himself into a justification of such conduct, much less expect to cheat anybody else. The very fact that the governor issued to the public his extraordinary proclamation explaining his reasons for granting to the contestee the certificate which plainly belonged to the contestant is a confession of

guilt. The puerile reference to law cases, one bearing on the construction of a promissory note, the other on a declaration, neither of them having the remotest possible analogy to the question in hand shows the straits to which the consciously guilty party was driven. The governor knew—could not help knowing—even if a poor penman omitted to close his o so that the word looked like t-w-e, instead of t-w-o, that the word intended was *two*. Upon general principles he was bound to presume that the three letters expressed the whole word, but he was especially bound to so assume in this case, because the law, of which he pretended to be so tender, required that "the certificate shall set forth, according to the truth, the full name of every person voted for, *and in words at length the number of votes he received for any office.*"

The law, therefore, told him that the word about which he pretended to doubt was *not an abbreviation* but a number written in words *at length*. He gratuitously assumed the violation of this law by the county court making the certificate, as well as did violence to the commonest kind of common sense when he tortured these three letters into the word "twelve."

He knew furthermore that "twe" is not now, never was, and probably never will be amongst sane men an abbreviation of twelve, or of twenty, or of any number known to an American. And he knew again that the letters were intended to express a number, and that there is no number known to the English language written with three letters, the first of which is "t" and the second "w" except the single number *two*.

But even if it were conceded that there could possibly have been a doubt as to what the word meant, then it was a patent ambiguity, which any law student could have told the governor it was his duty to explain by evidence. This he was bound to do, and could very readily have done, as will clearly appear hereafter. Had it been impossible for him to do so, the only legal alternative remaining was to strike out the word altogether as insensible, and read the return 800.

Neither process would have given the certificate to the contestee. The governor therefore guessed enough to give to that gentleman three of a majority.

The true vote in Pleasants County for Jackson was 802, and not 812. Nobody now claims, nor did anybody ever claim, that it was in fact anything else.

Counsel for contestee, however, without attempting to defend a trick indefensible, ingeniously argued before the committee that the governor had no legal standard by which to explain the so-called doubtful word, and that no competent legal evidence has been produced by the contestant, to show that the true vote in Pleasants County was other than as counted by the governor.

The argument is, that under the laws of West Virginia the commissioners of the county court do not constitute in any proper sense a court of record, but are merely a returning board, having no judicial functions, except when making a recount, and no authority to evidence their action except by the issue of a single certificate, which is to be sent to and deposited with the governor.

Upon the faith of this proposition it is contended, that the only legal record evidence of the vote in Pleasants County, as ascertained by the county court, is the certificate sent to the governor, and that the certificates procured by the contestant from the clerks of the county courts and offered in evidence, showing the results of the elections in the several counties, are not competent evidence.

These certificates, it is contended, were made without authority of law, and at the instance of a court having no right to make a record.

In support of this proposition counsel cited Brazie *v.* the Commissioners of Fayette County, decided by the supreme court of West Virginia, and reported in 25 W. Va., p. 213. In the judgment of the committee, that case does not sustain the contention. The question material here does not seem to have been necessarily involved in the case at all. The case arose upon an application for a writ of prohibition, to restrain the commissioners of a county court from going into a judicial examination in an election case outside of the returns made to them, to ascertain whether the precinct commissioners had certified and returned certain votes not entitled to have been cast.

The court held, that the judicial functions of the county court in an uncontested election case did not extend beyond the ascertainment of the result from the papers laid before them, and whether such papers are in fact such genuine, intelligible, and substantially authenticated returns as are required by law.

True, in the course of the opinion the judge delivering it said, that if the power of the commissioners were enlarged so as to include powers beyond those mentioned they would be made a tribunal by implication only, and "a tribunal which keeps no record of its proceedings, and from whose judgment there lies no writ of error or appeal," but the case is as well decided without this sentence as with it; it has no reference to any question necessarily involved in the issue, and is the merest *dictum.* Moreover the record here referred to is not the record of what, under the court's decision, the commissioners of the county court had authority to do, but a record of what they had no power to do. It is not the existing tribunal of which the court is speaking, but of a tribunal to exist only by implication.

Even if it be conceded that the functions of the county court are ministerial, and that in their exercise it makes no such record as imparts absolute verity, and to which a bill of exceptions will lie, still it by no means follows that it makes no record at all. There is inherent in every such tribunal and necessarily incident to its very purpose and existence, the power to make such record as will perpetuate and make available its legitimate action. This is a principle of universal application.

But aside altogether from general principles it will sufficiently appear from an examination of the legislation of West Virginia on the subject of elections, taking that legislation as a whole, that the county court is more than a mere returning board.

To that court is intrusted the duty of fixing voting places. (Code, sec. 5, ch. 3.)

To it are intrusted also the power and duty of naming election commissioners. (*Ibid.*, sec. 6.)

To it are returned certificates from the district canvassers, the ballots cast, and one set of the poll-books. Its clerk is made by law the custodian of these records. (*Ibid.*, sec. 20.)

When about to exercise the functions of the county court with respect to election returns the commissioners *convene in special session.* The court so convened has power to summon witnesses, to administer oaths, "to make such orders as shall seem proper to procure correct returns, and ascertain the true result" of the election. It has power to make a recount, and is charged with the duty of so doing upon demand properly made. A court which is a mere returning board, of course, would not need to meet in *special session.* Such board necessarily

would have only one kind of session, not two kinds, an *ordinary* and a *special* session.

Provision is expressly made by section 46, Acts 1881, chapter 5, for a complete record of all the proceedings of the county court, both those which relate to its general jurisdiction, exercised at its ordinary sessions, and those which relate to its exceptional jurisdiction exercised at its special sessions. The provision is:

> The county court of every county shall provide two record books for the use of the court, in one of which shall be entered all the proceedings of the said court in relation to contested elections; all matters of probate; the appointment of appraisers of the estates of decedents, and the appointment and qualification of personal representatives, guardians, committees, and curators, and the settlement of their accounts; all matters relating to apprentices, *and in the other of said books shall be entered all the other proceedings of the said court.*

But in addition to the record thus provided for, there are other provisions of the law with which the position assumed by contestee's counsel and now under discussion are inconsistent.

By section 22 it is prescribed that when an election is held in a county or district for any or all of some twenty-two different officers—State, county, and Federal—"the commissioners of the county court, or a majority of them, * * * shall carefully and impartially ascertain the result of the election in their county, and in each district thereof, and make out and sign *as many certificates thereof as may be necessary.* * * * The said commissioners shall sign *separate certificates* of the result of the election within their county *for each of the offices* specified in this section which is to be filled;" that is, *separate certificates* for *each* of the twenty different offices, State, county, and Federal.

Section 23, still preserving the plural number and speaking of certificates, makes provision for the disposition of these certificates. As to certain offices, *one* of the certificates is to go to the governor; as to certain other offices, *one* is to go to the secretary of state; as to certain offices, *one* is to go to some designated public officer; the *other* to the candidate elected.

In all cases, with respect to every office, it is the duty of the court to *sign separate certificates.* As, of the separate certificates directed to be made in the case of a candidate for Congress, *one* only is to go to the governor, and, as no provision is made for the giving of the other to the candidate or to any public officer, it necessarily remains with the clerk of the court.

By section 5 of chapter 130 (code of West Virginia)—

> A copy of any record *or paper* in the clerk's office of any court, or in the office of the secretary of state, treasurer, or auditor, or in the office of surveyor of lands of any county attested by the officer in whose office the same is, may be admitted as evidence in lieu of the original.
>
> * * * * * * *

Your committee are therefore clearly of the opinion that, under the laws of West Virginia, it was competent for the governor and it was his duty, to make intelligible if unintelligible the certificate as to the vote in Pleasant County, by consulting the certificate and record of that vote on file in the clerk's office of that county, and that in default of his having done so it is competent for them and is their duty now to do it.

It is conceded that ever since the passage of the West Virginia act of 1882, which we have been discussing, it has been the custom of the county court to keep on file a duplicate certificate, showing its conclusions with respect to the election of a Representative to Congress. Such being the case, even if your committee were not impressed with

the belief that the argument now made by the contestee involves no more than a mere technicality without merit, they would still consider that the adoption by them now of a new construction of the law, contrary to that so long generally adhered to as the true one, would be on their part a crime not very much less than that practiced by the governor when he gave to the contestee the certificate that belonged to the contestant.

In other words, your committee believe, that if the case was one of doubt, as it is not, the practice for so many years of the parties who made the law of 1882, and of the parties for whom it was made in construction thereof, is conclusive upon them in this proceeding.

And they are of opinion that, on the face of the returns, the contestant was elected by a majority of 12, and was entitled to the governor's certificate of election.

Such being the case, the contestant is now to be treated as if he had received the certificate, and the onus is cast on the contestee to show that the returns, if truly made, would elect him. (Wallace *vs.* McKinley, Forty-eighth Congress.)

This he attempts to do in his brief submitted to the committee, by a series of propositions quite as technical and void of merit as is the contention by which he seeks to retain the benefit of the certificate wrongfully issued to him.

In eight districts, in which he had an aggregate vote of 588 and the contestant an aggregate vote of 1,083, he asks that the total vote be excluded from the count for various reasons, in one district for one reason and in another district for another. His proposition will be found to resolve itself into a demand that the voters of these eight districts shall be disfranchised for reasons with which the voters themselves had nothing at all to do, for no fault of theirs. No one will deny that to sustain this contention strong and convincing reasons must be assigned. And it is only fair to say, that the leading counsel for contestee in his argument before the committee, admitted the purely technical character of the objections to the vote in these eight precincts and declined to press them. As to one precinct only the argument was pressed by the assistant counsel of the contestee.

An examination of the reasons urged for the disfranchisement of the voters of the several precincts named, taking them in their order, will justify counsel in his concession as to their purely technical character.

The first precinct complained of is Ebenezer precinct in Calhoun County.

Here the contestant received 39 votes and the contestee 19. All are asked to be excluded because it is alleged that it does not appear that the commissioners who conducted the election were sworn.

The record shows that on the poll-book returned to the county clerk's office the oath appeared at length and in the form prescribed by law, subscribed by each and all the commissioners, but the jurat is irregular and indefinite. It reads as follows:

> Subscribed and sworn to before me as one of the commissioners, L. F. Law, this —— day of November, 1888.
>
> PETER CONLEY.

Both Law and Conley were commissioners, and either had the power to swear all the rest. It is very clear, even from the imperfect record, that all took the oath by subscribing to it, and that as to two at least the certificate is conclusive. Where part of the officers are sworn,

others not, the election is valid. (Fuller *v.* Davison, 2 Bart., 126.) Two things are to be noted in this connection: first, that sworn or unsworn, all the commissioners were *de facto* election officers, and, second, that no harm resulted to any one, either the public or an individual voter, from their failure to be regularly sworn. All authorities agree that the acts of *de facto* officers are to be accepted and treated as valid so far as the public and the candidates are concerned. (Paine on Elections, sec. 373. and cases cited.) It is a well-settled principle of law, and a very ancient one, "that the act of an officer *de facto*, where it is for his own benefit, is void * * * but where it is for the benefit of strangers, or the public, who are presumed to be ignorant of such defect of title, it is good." (Cro Eliz, 699.)

It has been repeatedly held that a certificate of unsworn officers even, is prima facie, and the burden is on the contestant to show that the errors committed affected the result or rendered it uncertain. (Taylor *vs.* Taylor, 10 Min., 107; Whipley *vs.* McCune, 10 Cal., 352.)

It is contended, however, that this principle does not apply in this case because the law of West Virginia provides:

> The said oath shall appear properly certified on one of the poll-books of every election, and in no case shall the vote taken at any place of voting be counted unless said oath so appears, *or unless* it be proved to the satisfaction of the commissioners of the county court, convened at the court-house, as hereinafter required, that the oath was taken before said commissioners, canvassers, and clerks entered upon the discharge of their duties.

But the contention must fail and the argument be against the contestee for the manifest reason, that unless the oath had been taken the votes at this precinct could not have been counted. The taking of the oath was to be made to appear *either* upon the poll-books *or* by proof to the satisfaction of the county commissioners. These commissioners had power, "if deemed necessary, to require the attendance of any of the commissioners or canvassers, or other officers or persons present at the election, to answer questions under oath respecting the same, and to make such other orders as shall seem proper to procure correct returns and ascertain the true result of the said election in their county."

The commissioners of the county court must be presumed to have done all things within their power necessary to be done in the performance of their duty in accordance with law. They can not be presumed to have done anything unlawful. The votes could not have been lawfully counted unless the election officers appear to have been sworn, either by the evidence of the poll-book or by other evidence satisfactory to the commissioners. The votes were counted, and if it be true that the swearing of the officers is not proven by the poll-book, it must have been otherwise proven to the satisfaction of the commissioners.

No reason, therefore, has been shown why your committee should disfranchise the voters of this district.

The next district sought to be disfranchised in the interest of the contestee is Kentuck precinct, Jackson County, where there were 152 votes for contestant and 72 for contestee.

The complaint here is that no vote was returned on the poll-books by the precinct commissioners nor any certificate in the case of the candidates for Congress.

The law of West Virginia (section 18, chapter 3, Code) requires that upon the close of the polls there shall be read from the ballots, one at a time by one of the commissioners, the designations of the offices to be filled and the names of the persons voted for for each office.

The ballot shall then be handed to another of the commissioners, who if satisfied that it was correctly read, shall string it on a thread.

The contents of the ballots as they are read shall be entered by the clerks under the supervision of the commissioners on tally papers for the purpose by suitable marks made opposite to or under the name of each person for any office to be filled.

[Sec. 20] "As soon as the results are ascertained the commissioners or a majority of them * * * at each place of voting shall make out and sign two certificates thereof [according to a prescribed form] and transmit one to the clerk of the county court. They shall also seal up the ballots, and send them with one set of the poll-books to the said clerk."

A reference to the certificate (Record, pp. 341–2–3; 351–2) will show that the certificates were made and signed by the commissioners holding the election, and returned to the clerks of the county and circuit court, as required by law, but that the names of contestant and contestee did not appear in said certificate, nor the office for which they were candidates and received votes. But their names were on the ballots cast at said precinct for said office, and the ballots were counted by the commissioners of election, and their names were written down by them on the tally-sheets opposite or under the designation of the office for which they received votes, and the number of votes which each received was designated on said tally-sheets, to wit, 152 for contestant and 72 for contestee, in the same manner as was done with respect to the names of all other candidates voted for at said election, and the tally-sheets were returned with the certificates and the ballots to the clerk of the county court. The aggregate votes appearing thereby to have been cast for contestant and contestee were one less than the highest number appearing to have been cast for any other two opposing candidates. When these papers reached the commissioners of the county court, counsel for contestee demanded a recount of the votes for Jackson County, as to Representative in Congress, as he had the lawful right to do. Under this demand the commissioners of the county court recounted all the ballots cast for Representative in Congress in that county, and upon that recount the number of votes appearing to have been cast for the contestant and contestee were the same as appeared upon said tally-sheets, and including these votes, the result in the county was, for contestant, 2,272 votes, and for contestee, 1,886 votes. And this result was certified to the governor.

The only irregularity here seems to have been a clerical error, in the failure of the election commissioners to insert in the certificate the result of the election at that precinct as to Representative in Congress. They did ascertain the result and wrote it correctly on the tally-sheets, and when the county commissioners counted the ballots at the demand of contestee's counsel, they obtained the same result, and the ballots were there and inspected by the commissioners, and presumably by the contestee's attorney who made the demand for recount.

But this failure of the commissioners of election to make return of the votes at this precinct could not have the effect to disfranchise the persons who voted there, and the law of West Virginia especially provides for such a case. In declaring the powers and duties of the county commissioners in ascertaining and declaring the result of the election in their respective counties, the following language is used:

They may, if deemed necessary, require the attendance of any of the commissioners or canvassers or other officers or persons present at the election, to answer questions under oath respecting the same, and may make such other orders as shall seem proper to procure correct returns and ascertain the true result of the said election in their county.

The presumption as well as the proof is, that the county commissioners ascertained, by the exercise of their powers of examination, the true result of the election, and certified accordingly. There is no pretense that they did not.

Counsel for contestee say that he, the contestee, made no demand for a recount of the vote at this precinct, and argue that the fact of such demand should appear of record. There is no law requiring the demand to be made matter of record. There is no record of demand made in any precinct, though contestee admits having made such demand in some. There is affirmative proof (Record, p. 724) that demand was made for a recount in this precinct by contestee's attorney, and neither the attorney nor the contestant was called to rebut this evidence.

The matter does not seem material, nor to merit discussion, since there is no pretense that the commissioners in the exercise of their legitimate functions did not ascertain the true vote in this precinct; no pretense that it was not truly declared; no pretense that any voter suffered anything by the alleged irregularity; in fact, nothing to take this case out of the ordinary rule of law, that statutes directing the mode of proceeding of public officers are directory merely, unless there is something in the statute itself which plainly shows a different intent.

Contestee further claims that the returns from Pine Log precinct, Jackson County, should be excluded. His charge is that "there was such misconduct and fraudulent acts upon the part of those who conducted the election as to render such poll and the votes cast respectively for contestant and for contestee null and void; that is, 139 votes for contestant and 92 votes for contestee."

From the evidence the facts appear to be as follows: Thomas Rorden, John McKown, and W. T. Dernberger were the commissioners conducting the election at this precinct. C. C. Nesselrood, a witness for contestee (p. 317–18) testifies, that the votes were counted during the night following the day of the election, and that he remained there while the vote was being counted and until it was completed; that after midnight witness went to sleep and awoke after sleeping about two hours; that when he awoke Dernberger, one of the commissioners, was asleep on a bench, and McKown, another of them, was smoking in the back part of the house; and the other commissioner, Rorden, was being assisted in the counting by W. E. Dernberger, son of the commissioner, and W. H. Rorden and Asberry Davis were stringing the votes; that Dernberger, the commissioner, and his son were both Democrats, the former being a member of the Democratic county committee; that Davis is a Democrat, and took the place of McKown in the counting. By inference, therefore, McKown is a Democrat, and Rorden was the Republican commissioner. This is the only witness who testifies as to the conduct of the election at that precinct.

The evidence does not show that the ballot-box was in the custody of any one of the commissioners so as to require it to be sealed. Even if it was out of the custody of Dernberger, from the fact that he was asleep, it was not out of that of McKown who was present in the room, and the counting proceeded under his observation, and his place was filled in the operation of counting by a Democrat. There is not the slightest evidence tending to show that there was any tampering with the ballot or returns, or any fraud of any character. All that was done was in the presence of at least two of the commissioners who were awake.

It appears from the evidence of Lemley (pp. 724–'5) that the return from this precinct did not show any votes for contestee, but 139 votes

for contestant, a mere clerical error in failing to write into the return contestee's vote, but, under the recount which was demanded by contestee, the votes for him at this precinct were counted by the commissioners of the county court, and the number of them, 93, included in their return to the governor.

It is to be observed that no allegation of any specific act of fraud is alleged. Your committee are asked to presume that fraud was committed because it might have been committed, and this in the absence of any pretense that a single legal vote was excluded from, or a single illegal vote was included in, the result announced.

Your committee do not know of any principle of law that would justify them in so finding. They understand the law to be as declared in Mann *v.* Cassidy (1 Brewster (Penna.), 60).

An allegation of fraud committed by election officers is immaterial unless it be also stated that the result has been affected.

The votes in Pine Log precinct should be counted as returned.

The next precinct complained of is Boyer precinct, Putnam County.

Contestee charges that the voting place in this precinct, established by order of the county court, was McGill's post-office, but that the election was held at Isaac's Branch school-house, from one-half to three-quarters of a mile distant from the post-office. (Record, p. 33.) The evidence tends to prove the above statement, but it is not claimed, nor does the evidence tend to show that any person was deceived or prevented from voting thereby. Two witnesses only are examined by contestee in relation to this precinct, and one of them (Fowler, pp. 408–9) says that it was his understanding from the time he knew of the election, that it was to be held at the Isaac's Branch school-house, and that every voter in the precinct voted at said voting place, at said election, except one, and he was too sick to go to the polls. The other witness (Dunlap, p. 410), corroborates Fowler generally, and in addition, says that the school election in 1887 was held at the same place. So that contestee, by his own witnesses, proves that no voter was wronged out of his vote, and that he was not injured by this change of voting places.

This case calls for the application of the rule which protects the voter against disfranchisement from the default of a public officer when such default has resulted in no injury to any one. (Farrington *v.* Turner, 53 Mich., 27; People *v.* Simonson, 5 N. Y., 22; Steele *v.* Calhoun, 61 Miss., 556.)

The next precinct asked to be excluded presents facts very similar to the last, and is governed by the same principles.

Thomas School-House precinct, Putnam County: Contestee contends that the legal voting place for this precinct was the residence of Josiah C. Thomas, and that the election was held at the Thomas School-House, about three-quarters of a mile distant from said residence.

Josiah C. Thomas is the only witness examined in relation to this objection and he was introduced by contestee (Record, pp. 410–11). He says that the voting place was established at his house in 1849 or 1850 by an act of the legislature of Virginia. This is not the way to prove an act of the legislature. It probably amounts however to proof that this was the voting place of the precinct by common consent, for he says they continued to vote there down to and including the Presidential election of 1880, that soon thereafter he spoke to some parties to have it changed, that word afterwards came that it had been changed to the school-house, that this was generally understood, and that every election since 1880, including the one in question, has been held at the school-house,

and that that has been the voting place of the precinct since that time according to common understanding.

Under this evidence, one of these places seems to have been established by custom, or common consent. At the time of the election the school-house was the legal voting place, and the subsequent order of the county court fixing it as the legal voting place was unnecessary, as it had already before that time recognized it as such by counting and considering the votes at former elections there cast. There is no possible pretext for assailing this precinct.

The contestant, in his notice of contest, specified three precincts where the election was not held at places designated by law, viz., Sandyville, Jackson County; Reedy and Curtis, in Roane County, at each of which the contestee received majorities greater in the aggregate than the majority received by contestant at the precincts challenged, for like reasons, by the contestee in his reply. The facts are about the same in the cases on both sides. No voter appears to have been deprived of an opportunity of voting by reason of the fact that the election was not held at the place designated by law.

The contestant did not press these objections made in his notice of contest. If he had they must have been overruled upon the principle already announced.

In Walton precinct, Roane County, the contestee claims that the ballot-box was in the custody of one of the commissioners of election alone, in violation of law, and that the vote at this precinct, where contestant had 131 plurality, should be rejected for this reason.

The section of the law relating to this subject is as follows (Code, ch. 3, sec. 14):

> The ballot-box shall have an aperture in the lid or top thereof to receive the ballots of voters. While the polls are open it shall be kept where it may be seen by the voters, and after the polls are closed, and until the votes are counted and the certificates of the result are signed, shall remain in the immediate custody of the commissioner, or any one of them, with the consent of the others. But it shall not be opened unless two of them at least be present, and if left at any time in the custody of one of the number, shall be carefully sealed so that it can not be opened or any ballot taken therefrom or entered therein without breaking the seal, and the others shall write their names across the place or places where it is sealed.

The facts are as follows:

The ballot-box was a firm wooden box with a sliding lid with a hole through the top to receive the ballots. There was a lock on the box but no key to it; the lid would slide easily; the lid was fastened with a nail which could be drawn out with the fingers. The commissioners of election were N. K. Walker, H. O. Rock, and J. C. Garvin; the first two Democrats and the last a Republican; on the day of the election the commissioners went to dinner at a hotel near by, and Garvin had the box; there was a seal over the aperture in the lid (p. 469); Garvin finished dinner first and took the box under his arm and went to a store about thirty or forty steps from the hotel, and in not more than five minutes Walker followed him there; contestee's witness says if box was sealed ballots could not have been put in or abstracted without the same being detected, but could if it was not sealed. They commenced counting ballots in the evening of the 6th and continued until 3 a. m., of the 7th, then took a recess until after breakfast and finished counting at 10 p. m. of the 7th. The counting was done at Mr. Riley's hotel upstairs; during the count on the 7th they halted for a rest and Walker and Rock went out and left Garvin and the two clerks with the ballot-box, which was then sealed. Walker returned in a few minutes and found only Garvin and Chris. Summers, both Republicans, in

the room, standing, one on either side of the table on which the ballot-box was. Walker testifies for contestee that he saw nothing in the conduct of Garvin or Summers which led him to suppose that there had been any tampering with the ballot-box, and that there was nothing to indicate that there had been; that he knew Garvin well, and did not believe he did or would tamper with the ballot-box, or permit it to be done; that the result of the election was about as usual at that precinct, and nothing in it to indicate that there was any tampering, and that the number of ballots tallied with the number of names on the poll-books. There is a total absence of evidence tending to show any fraud or improper practices on the part of any one in conducting the election.

The evidence fails to show that the box was "left at any time in the custody of one of the number" in contemplation of the law. While they were at dinner it was as much in the custody of the one who did not have manual possession as it was in his who did. Besides, at that time it was sealed. On the other occasion it was not left in Garvin's custody in contemplation of law or in fact. The others stepped out only momentarily. The sealing was to be done only when the two turned it over to the third, thereby expressly charging him with the custody.

Besides, if there was any violation of law it was only technical, and did not tend to the injury or prejudice of the contestee, and can not deprive the voters of the right of having their votes counted as cast.

The same rule of law applied with respect to Walton precinct applies here. There was no evidence of bad faith or injurious results, nor was the result of the election rendered unreliable by reason of anything charged against the election officers.

The innocent voters of this precinct can not be disfranchished upon a mere presumption of fraud, even if the circumstances would justify it, as they do not.

The objection made to the vote of the Murphy's Mill precinct is of such a frivolous character as to merit but little discussion. It is, that the oath of the precinct commissioner does not appear properly certified on the poll-book. It was not properly certified because Marion J. Bickle, a justice of the peace who administered it, signed the jurat "Marion J. Bickle, in and for Clay district, Wood county, W. Va.," omitting the words "justice of the peace" after his name.

He was in point of fact, a justice of the peace as the evidence shows. The less comment made on this objection the better, one would think, for the contestee.

The next objection is like unto the last, and relates to Wadesville precinct, Wood County. The objection here again relates to an alleged irregularity in the *jurat*. The oath was adminstered by T. J. Sands, one of the commissioners of election, but he omitted to sign with his official title.

That the oath was administered by him, that he was a commissioner and by law authorized to administer it, are facts not capable of being called in question.

The matter does not seem to merit discussion.

Bearing in mind that the contestant was in the first instance entitled to the governor's certificate and had a majority of twelve, it appears from our examination of the case thus far, that he still retains that majority, and we address ourselves to the question as to whether it has been overcome by proof as to the illegal votes claimed to have been cast on both sides.

To qualify one to vote in West Virginia he must be a male citizen of the United States, twenty-one years of age, must have resided in the State for one year next preceding the election, in the county sixty days, and must be a bona fide resident of the election district in which he claims the right to vote. Paupers, convicts, and persons of unsound mind are not voters.

By the record and briefs filed in this contest, a large number of votes are attacked by both parties. In considering these votes so attacked the committee deem it proper to state generally the rules by which they have been governed in determining the question of legality or illegality, and for whom the votes were cast.

First. A vote accepted by the commissioners holding the election is prima facie legal. Before it can be thrown out for illegality it must be satisfactorily shown by the evidence to have been cast by one not legally qualified to vote—that is to say, the presumption of legality must be overcome by a clear preponderance of competent evidence.

By competent evidence we mean such evidence as would be admitted on the trial of the issue before a judicial tribunal, except where a relaxation of the rule is made necessary by the nature of the issue.

No provision is made by the statutes of West Virginia to ascertain what particular ballot any voter has deposited after it has been once placed in the ballot-box. Therefore in this case it becomes necessary to ascertain for which candidate a vote was given by other means than the ticket itself.

It seems to have been taken for granted by both parties that the voters themselves could not be compelled to disclose how they voted. It may be remarked in this connection that one who would knowingly cast an illegal vote ought not to be regarded as the most reliable witness. On the other hand, when he has been honestly mistaken, we can see no reason why such voter ought not to be trusted as a witness.

In order, then, to prevent illegal voting with impunity, it becomes necessary to determine what kind of testimony shall be received in ascertaining which candidate got the benefit of the illegal vote. The committee have followed the rule which appears to them to be the most reasonable, as well as the best sustained by authority.

In the absence of direct proof, evidence showing to what political party the voter belonged, whose election he advocated, whose friends maintained his right to vote, and kindred testimony, has been held admissible. Of course what the voter said at the time of voting is admissible as a part of the *res gesta.*

But what a voter said after the day of the election, either as to his qualifications, or how he voted, or whether he voted, the committee hold to be inadmissible in the absence of other testimony on the point. If such testimony can be admitted at all, which we do not concede, it certainly ought not to be received when the statement of the voter is made after the legality of his vote has been called in question. To admit this kind of testimony is to place it in the power of one not entitled to vote to have his illegal vote counted twice against the party he desires to defeat, without subjecting himself to cross-examination, and without even the formality of testifying under oath.

Again, one legally qualified may, by statements after he has voted, make himself out to be disqualified without incurring any penalty, and in that way have his legal vote given to one party counted as illegal against another party. One who has not voted at all may in the same way be proved to have voted. In a close contest, with party feeling running high—perhaps party control involved—the admission of this

kind of testimony would be doubly dangerous. It has nothing to commend it except a class of decisions whose authority has been weakened, if not destroyed, by later and better considered adjudications. The committee reject all such testimony as being mere hearsay of the most dangerous kind when standing alone. When the only evidence of how a man voted, or whether he was a legal voter, is the unsworn statement of the voter after the election, we have let the vote stand.

In regard to what constitutes a person of unsound mind we have adopted the rules substantially as laid down by American courts and text-book writers and hold that a person having sufficient intelligence to make a valid will, or to bind himself by ordinary contracts, or to be criminally responsible for his acts, is a person of sound mind. One whose will would be held invalid, for no other reason than mental incapacity, is a person of unsound mind.

In the record we find the oft-recurring question, "Was the voter in your opinion a man of unsound mind," put to a non-professional witness without any attempt to define what was meant by unsoundness of mind. To the answer to such question, unaccompanied by any explanation of what the witness understood by the term, we attach very little weight.

The condition of the voter, his acts and speech, how he is regarded by those who know him, as to his competency to contract, judicial determinations, and the like evidence has been given due weight. The term idiot is so well understood that the statement of a witness that a person is an idiot is given more weight, as being the statement of a fact within the knowledge of the witness, and not a mere opinion.

With these rules in view the determination of the legality of a vote only requires a fair and intelligent consideration of the evidence. Upon the question of what constitutes a pauper, there is some disagreement in the authorities, but we think the following may be taken as a fair definition: A pauper is one who is continuously supported in whole or in part out of funds provided by the public authorities for that purpose. One who has been a public charge, and afterwards becomes self-supporting for a sufficient time before the election to show that his ability to support himself is not a mere temporary condition, may legally vote.

One who, under temporary misfortune or sickness, receives public aid, but is ordinarily self-supporting, is not a pauper.

The law which determines the question of residence is so well settled that it does not need a restatement by the committee; the difficulty is in the application of the law to the evidence.

Absence from the place claimed as a residence, for temporary purposes, does not work abandonment, but in this case some of the witnesses and some of the commissioners of election seem to have had the view that a voting residence might be retained by the simple statement of intention to retain a certain place as a voting residence, although an actual residence had been taken up elsewhere, with no fixed intention of ever again actually living at the place where the right to vote is claimed. Others seem to think that they can establish a new residence by intention before actually and in fact moving to the new place.

We do not concur in these views. It takes both act and intention to establish a residence, and an intention to retain a residence which has been left must be an intention actually to return to it and reside in it.

Some votes in this record are questioned on account of disputed or doubtful boundary lines. The committee have not thought it their duty to go into an investigation of disputed boundaries, but have counted all votes as legal when the voters were otherwise qualified and

voted in good faith in the district where they believed that they had their residence, and where they had been in the habit of voting.

Applying the foregoing rules we now propose to consider the separate votes without attempting to discuss each vote at any length.

Contestee in his brief substantially concedes that the following votes cast for him were illegal and ought to be deducted from his vote.

Ephriam Hensley, non-resident.
W. J. Gilmore, non-resident.
C. D. Stalnaker, minor.
Charles Reynolds, non-resident.
John C. Deaton, pauper.
James Powell, unsound mind.
Henry Reynolds, non-resident.
Grant Griffith, minor.
Napoleon Adkins, Wayne County.
W S. Napier, Wayne County.
W. W. Bromfield, Wayne County.
Alderson Watts, jr., Wayne County.
William Noe, Wayne County.
C. O. Bellomy, Wayne County.
Elias Browning, Wayne County.
W. Y. Woodring, non-resident.
Noble Hunter, convict.
John Cochran, pauper.
Frederick Schwall, pauper.
Michael Hobart, non-resident.

making twenty conceded illegal votes, one of which, Frederick Schwall, we deduct, as the concession grows out of testimony which the committee do not consider competent.

Two or three of these votes contestee insists should not be charged against him, because not named in contestant's notice of contest.

One of them, Michael Hobart, was challenged by contestee in his reply. The vote was illegal and cast for contestee. The committee think that a vote challenged in the notice by either party is a proper subject of investigation.

Two others were not named in either notice. The pleadings in this case are more specific than the practice before the committee requires. As a general rule parties ought to be bound by their pleadings, but where neither party has been taken by surprise, and both have entered into the investigation, the rule should be relaxed in the interest of justice.

The evidence in regard to these voters was taken a month before contestee commenced examining his witnesses, the witnesses impeaching the votes were cross-examined on this branch of their testimony, and the contestee should be held to have waived his objections.

In a final summary of his claims contestant has conceded that he has failed to establish his charges with reference to a number of named voters, and that the evidence in regard to others places them in the doubtful list. As to all such we have not felt it our duty to examine the evidence, as we take the admission to amount to a waiver. Although as to some of them it may be said it takes all the benefit of presumptions to hold them valid.

Of these claimed to be fully established as having been illegally cast for contestee, the committee hold that the following should be held to have been illegally voted for contestee:

W. R. Surratt, non-resident.
Wm. Gibson, minor.
John Starcher, minor.
Jacob L. Starcher, non-resident.
John Carney, unsound mind.
O. J. Simmons, non-resident.
Oliver Burns, non-resident.
Reese Stratton, unsound mind.
W. A. Palmer, non-resident.
E. J. Long, non-resident.
Dr. W. S. Reese, non-resident.
J. D. Summers, non-resident.
N. B. Armstrong, non-resident.
John Ball, unsound mind.
Abram Jones, pauper.
Thomas Stinson, non-resident.
James Dillen, non-resident.
Walter Dillen, non-resident.
Ali Artrip, minor.
John Cox, non-resident.
A. Kaminsky, non-resident.
Lazarus Wainer, non-resident.
George Dean, minor.
Henry Yearing, non-resident.
Joseph Starling, non-resident.
E. D. Lewis, minor.
James Bolyard, minor.

Twenty-seven in all—or forty-seven illegal ballots voted for contestee.

med to be a resident because of his intention to become one. It
ines the conjunction of act and intention to establish a residence.
R. Armstrong (Record, pp. 149, 151, 155, 473): Voted in Roane
ty, but had not lived in the county sixty days. Had a farm in
e County. Rented it, and moved to Wirt County in 1886. Claimed
he did not intend to abandon his residence in Roane County, but
in Wirt County in the fall of 1886, which act concludes him to
ntended to establish his residence there. He says himself that
not say that he moved his family back sixty days before the
n.

Ball: This man was not far removed from idiocy.

Stinson: Voted in Wayne County, and lived in Logan County.
from Wayne to Logan in the spring of 1888. He was examined
commissioners and his vote admitted on a ruling that he had not
ently abandoned his former residence. The uncontradicted tes-
s against his right and the voter was not called, although it
that he could have been. This is one of the cases in which the
as based upon a misunderstanding of the law, and of what
ntention it takes to retain a residence.

Dillen, Walter Dillen, non-residents: Father and son; moved
tucky less than a year before the election.

rip, minor, (Record, pp. 179, 202, 204, 481, 486–487): We think
be no question but that this voter was a minor. All the ad-
stimony is to that effect.

s, non-resident: Moved to Kentucky and engaged in busi-
sident, paying taxes, working roads, etc. We think his re-
st Virginia was an afterthought, arising from the gift of
o his wife by her father. There is more doubt about this
ny other considered, but the committee thinks it the safer
de his vote.

ki, Lazarus Wainer, non-residents: They were Russian
uralized in Baltimore, September, 1888, and proved that
ded there for a year next preceding the election, as shown
ate of naturalization. They traveled around in West
n not be heard to contradict their naturalization papers.

n, minor: This voter swears he was of age when he
other evidence in the case shows that he did not tell
seems to have thought that he was doing a smart thing
stant by surprise, and contestee insists that contestant
mitted to contradict his own witness. We do not so-
law when applied to circumstances of this kind.

g, non-resident: This vote was clearly illegal, but it
y appear for whom it was cast.

g, non-resident: Clearly illegal. Dispute as to how
dering all the legal evidence we do not think there is
ubt.

nor: The most satisfactory evidence is that he was

minor: Admitted that the vote was illegal, but ob-
ound of want of notice—which we have already con-

g's vote, and it leaves 26 votes to be added to the
16 illegal votes cast for contestee, which, with the
ce of the returns, makes 58 plurality for contest-
to a seat unless a larger number of illegal votes

lost his residence; but in January, 1889, he mad
was in Minnesota on April 1, 1888, and by so d
taxes. He can not be heard to say that he ha
West Virginia against the fact of two years' a
family in another State and his declaration on
his property rights.

John Carney (Record, pp. 83, 88, 89, 91, 327, 3
ance of evidence shows this man to be entire
acts. On application of his brother a commit
appointed for him. It is said the clerk who
had no legal authority for his act. Be that as i
mate of his family and those who knew him bes

O. J. Simmons, non-resident (Record, pp. 83, 8
ginia and moved to Ohio a year or more before
there. Claimed that his vote in Ohio was illeg
tain a residence in West Virginia. His act was
intention.

Oliver Burnes: Was a resident of Ohio at th
having permanently moved from West Virginia.
to be controverted, but it is claimed that inasm
not appear in the notice of contest the vote can n
have previously referred in this report to this c
one falls fully within the rule announced.

Reese Stratton: This voter was not far remov

W. A. Palmer, non-resident (Record, pp. 97–98
age in May, 1888; lived with his father in Ohi
family to West Virginia in March, 1888. His f
West Virginia the previous fall and seeded it, l
until the following spring. The son helped the
then returned to Ohio, and went to school durin
no possible question about the illegality of this v

E. J. Long, non-resident: Clearly not a residen
enough to obtain a voting residence. Objected
as the vote of Oliver Burns, already discussed.

Dr. W. S. Reese, non-resident: Moved to Ol
with his family. His claimed intention to retur
conditional. He not only did not carry out his al

Claimed to be a resident because of his intention to become one. It requires the conjunction of act and intention to establish a residence.

N. B. Armstrong (Record, pp. 149, 151, 155, 473): Voted in Roane County, but had not lived in the county sixty days. Had a farm in Roane County. Rented it, and moved to Wirt County in 1886. Claimed that he did not intend to abandon his residence in Roane County, but voted in Wirt County in the fall of 1886, which act concludes him to have intended to establish his residence there. He says himself that he can not say that he moved his family back sixty days before the election.

John Ball: This man was not far removed from idiocy.

John Stinson: Voted in Wayne County, and lived in Logan County. Moved from Wayne to Logan in the spring of 1888. He was examined by the commissioners and his vote admitted on a ruling that he had not permanently abandoned his former residence. The uncontradicted testimony is against his right and the voter was not called, although it appears that he could have been. This is one of the cases in which the ruling was based upon a misunderstanding of the law, and of what kind of intention it takes to retain a residence.

James Dillen, Walter Dillen, non-residents: Father and son; moved from Kentucky less than a year before the election.

Ali Artrip, minor, (Record, pp. 179, 202, 204, 481, 486–487): We think there can be no question but that this voter was a minor. All the admissible testimony is to that effect.

John Cox, non-resident: Moved to Kentucky and engaged in business as a resident, paying taxes, working roads, etc. We think his return to West Virginia was an afterthought, arising from the gift of some land to his wife by her father. There is more doubt about this voter than any other considered, but the committee thinks it the safer rule to exclude his vote.

A. Kaminski, Lazarus Wainer, non-residents: They were Russian peddlers, naturalized in Baltimore, September, 1888, and proved that they had resided there for a year next preceding the election, as shown by the certificate of naturalization. They traveled around in West Virginia. Can not be heard to contradict their naturalization papers.

George Dean, minor: This voter swears he was of age when he voted—but the other evidence in the case shows that he did not tell the truth. He seems to have thought that he was doing a smart thing in taking contestant by surprise, and contestee insists that contestant shall not be permitted to contradict his own witness. We do not so understand the law when applied to circumstances of this kind.

Henry Yearing, non-resident: This vote was clearly illegal, but it does not certainly appear for whom it was cast.

Joseph Starling, non-resident: Clearly illegal. Dispute as to how he voted. Considering all the legal evidence we do not think there is much room for doubt.

E. D. Lewis, minor: The most satisfactory evidence is that he was a minor.

James Bolyard, minor: Admitted that the vote was illegal, but objected to on the ground of want of notice—which we have already considered.

Deducting Yearing's vote, and it leaves 26 votes to be added to the 20 admitted; in all, 46 illegal votes cast for contestee, which, with the 12 plurality on the face of the returns, makes 58 plurality for contestant, which entitles him to a seat unless a larger number of illegal votes were cast for him.

[illegible], pauper.	Peter [illegible]
A. F. Blusing, non-resident.	Spencer
T. J. Hurlburt, non-resident.	Daniel [illegible]

Eighteen altogether.

There are others who clearly were not e some of them, as was the case with votes c for contestee and not considered by the pear that they voted; as to others it neith voted nor with what party they affiliated, t stated after the election and after the legali called in question.

Fourteen other votes, laborers on a rail ground that they had not lived in West Vir residents of the district where they voted, an poration.

As to some of them it clearly appears th State a sufficient time to entitle them to vote it shown by competent testimony that they l and the presumption is in their favor.

They belonged to a construction gang whi where they voted; to this point they constantl mail there; had their washing done there, an residence there. Their employment by a cor a residence, but it did not prevent them fro had voted there a year before. We think the is in no way overcome by the evidence.

William Wix, a minor, attacked by contes testee to have voted for contestant is a some mother and sister, with whom he lived and w are Democrats of a pronounced type. On th his sister says she asked him to vote for the D clared his intention to vote Republican, and c her he had done so. It is a little strange tha his mother and sister should be sending him him to vote for their candidates, considering t subsequently gave. At the polls he was cha waited until his challenger was out of the wa election declared he had [illegible]

This testimony was peculiar to say the least, and is subject to grave suspicion, but as the witness was not impeached by subsequent testimony we allow the charge and count the vote as illegal.

This gives 19 illegal votes for contestant, and leaves the actual plurality for contestant 39, which, in the judgment of the committee, is as near a correct statement of the true vote as can be given from all the evidence before us, and we so report.

The committee, therefore, report the following resolutions, and recommend their passage:

Resolved, That James M. Jackson was not elected as a Representative to the Fifty-first Congress from the Fourth Congressional district of West Virginia, and is not entitled to the seat.

Resolved, That Charles B. Smith was duly elected as a Representative from the Fourth Congressional district of West Virginia to the Fifty-first Congress, and is entitled to his seat as such.

VIEWS OF THE MINORITY.

Mr. CRISP, from the Committee on Elections, submits the following as the views of the minority:

We have heard read that portion of the report of the majority relating to the law of the case, and in the main we agree with the view therein expressed; at least in the application of the law to this case there seems to be no very important difference between us. Under the law of West Virginia the returns of the vote cast at the various precincts or voting places in each county must on the fifth day (Sundays excepted) after every election be by the officers having charge of the ballots, poll-books, and certificates placed before the commissioners of the county court, who are required to convene in special session on that day for the examination of such certificates or returns. Upon the demand of any candidate voted for, such commissioners are required to open the sealed packages of ballots and recount the same. Such commissioners shall carefully and impartially ascertain the result of the election in their county and make out and sign as many certificates thereof as may be necessary, dependent upon the number of officials voted for.

In the case of an election for Representative in Congress the commissioners transmit their certificate of the result to the governor, who ascertains who is elected and makes proclamation thereof. The certificate of the commissioners of Calhoun County under date of November 12, 1888, duly transmitted to the governor of West Virginia, show that C. B. Smith, contestant, received 630 votes. The county court of said county, on January 7, 1889, entered an order changing the vote of Smith to 632, an increase of 2 votes over the original return or certificate. The commissioners for Ritchie County sent two certificates to the governor, one dated November 13, 1888, showing that Smith received 1,972 votes, and the other dated November 14, 1888, showing that Smith received 1,973 votes, the later certificate showing one more vote for Smith than the earlier. The governor held in both these cases that he was bound to act upon the certificates earliest in date, for the reason that when the commissioners, acting as a board of canvassers under the law, made and transmitted to him their certificate of the result and adjourned their powers ceased, and both the order of the county court, correcting the first return from Calhoun County, and the second certificate from Ritchie County were illegal, unauthorized, and void.

The undersigned are inclined to think the governor was right in his view of the law; but inasmuch as we are satisfied, from other evidence contained in the record, that the later returns show the true state of the vote in these counties, and inasmuch as we are not by the law restricted in our investigation as was the governor, we accept such later

...on the governor, in his order-book declarin
says:

The words and letters are too plain for any misti
given there is no authority to go behind the retu
counted if enough appears to ascertain the meaning.
held: "There was no error in admitting the note s
amount thereof is written four *hund* and two a
Porter, 72 Ind., p. 525.)

So it has been held that the abbreviation in a decl
dollars" is not error. (1 W. L. J., Mich., 395.)

If enough appear to make the return intelligible it
This can not be done without striking out one lett
supplying the seemingly omitted letters. Acting
latter appears more in consonance with adjudged ca
give Jackson eight hundred and twelve votes. It wi

After carefully considering the evidence co
dence wholly outside of said certificate—we t
by Jackson in Pleasants County was 802; we
it, thus conceding to contestant just what he c
this county. Contestee averred that certain
because he says it does not appear the manag
sworn. In such cases the law of West Virgi
vote shall not be counted. We are not sa
establishes this charge, and therefore we rejec
thereby again agreeing with the contention o

Contestee claimed that the vote of Walton
should be excluded because there was "such
and failure to discharge their duty on the par
election who held the election on the 6th day o
precinct as amounted to fraud." It appears f
ballot-box was an oblong, firm, wooden box,
hole through the top to receive the ballots; th
but no key; the lid would slide easily; a nail
from sliding; the nail could be pushed in a
fingers. This box in this unsecured condition
clusive possession of Mr. Garvin, a Republican
Summers, another Republican. They had opp
with the box, and to this extent its integrity i

Mr. Garvin and Chris. Summers were not a

tion day accepted the new place as legal, we see no reason for rejecting votes on this ground, again agreeing with the contention of contestant. This, we believe, disposes of all exceptions which might be by some thought technical, and we find ourselves at that point in the case where we begin to examine the evidence bearing upon the votes charged to be illegally cast for contestant, and the evidence bearing upon votes charged to be illegally cast for contestee, in full accord with the contestant as to the number of votes, including those charged to be illegal which were cast for the parties to this contest, respectively:

For Charles B. Smith	19,837
For James M. Jackson	19,825

Contestant avers that 102 votes should be deducted from the 19,825 votes cast for contestee because he claims that number of said votes were illegal, naming the voters.

Contestee avers that 127 votes should be deducted from the 19,837 votes cast for contestant because he claims that number of said votes were illegal, naming the voters.

The legality or illegality of each of these votes depends upon the law of West Virginia as to the qualification of voters and the facts proven as to each voter.

First, as to the law:

The male citizens of the State shall be entitled to vote at all elections held within the counties in which they respectively reside, but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote for sixty days next preceding such offer, shall be permitted to vote while such disability continues; but no person in the military, naval, or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein. (Constitution West Virginia, Article IV, sec. 1. See published acts of 1872–73, page 8.)

The male citizens of the State shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote for sixty days next preceding such election, and who is not, at the time of the election, an actual and bona fide resident of the district in which he offers to vote, shall be permitted to vote in such district while such disability continues. And no person in the military, marine, or naval service of the United States shall be deemed a resident of this State by reason of his being stationed therein; nor shall any person in the employ of an incorporated company, or of this State, be deemed a resident of any county, or of any district therein, by reason of being employed in said county or district. (Acts 1882, ch. 155, sec. 9. See published acts of 1882, p. 493.)

Second. As to the facts. The 229 votes assailed by the parties to this contest are attacked upon the following grounds: It is averred that some are minors, that some are non-residents of the State, that some are non-residents of the counties where they voted, that some voted without the election precinct of their residence, that some are of unsound mind, that some are paupers, and that some have been convicted of felony. To establish the charges made against the legality of these votes some 600 witnesses were examined, and their evidence appears in the record.

The undersigned believe the only correct and satisfactory way to determine who was elected to this Congress from the Fourth Congressional district of West Virginia by the legal voters thereof, was for the Committee on Elections of the House to consider each contested vote, examine all the evidence in the record bearing thereon, and then by a vote of the committee determine the legality or illegality thereof. In this way, and in this way only, the undersigned think could this case be

and considered all the evidence bearing up
either party and here present their conclus

We find that the following-named voters
Jackson, the contestee, and that said ballot
deducted from the vote heretofore stated as

1. W. R. Surratt.
2. C. D. Stalnaker.
3. J. L. Starcher.
4. Charles Reynolds.
5. J. G. Armstrong
6. J. C. Deaton.
7. John Carney.
8. E. J. Long.
9. J. D. Summers.
10. John Ball.
11. W. S. Napier.
12. W. W. Bromfield.
13. Alderson Watts.
14. Napoleon Adkins.
15. C. O. Bellemy.
16. Wm. Noe.
17. Elias Browning.
18. Abram Jones.
19. Jas. Dillon.
20. Walter Dillon.
21. A. Kaminsky.
22. Lazrus Waines.

We find that the following-named voters ca
contestant Smith, and that said ballot was ill
ducted from the vote heretofore stated as the

1. Peter Trent.
2. Spencer Dean.
3. David Smith.
4. P. Wayne.
5. William Wix.
6. John Brannen, jr.
7. John Sheets.
8. C. M. Messerly.
9. Henry Dye.
10. I. C. Leonard.
11. John Davis.
12. J. T. Mooney.
13. Wm. McCoy.
14. Robt. Treet.
15. B. F. Blessing.
16. Isaac Cullens.
17. Wm. Lee.
18. T. G. Hulbert.
19. Geo. H. Rice.
20. E. Fletcher.
21. Elijah Kiggins.
22. J. Lute or Luh.
23. Thos. Burt.
24. Lewis Mallory.
25. John Harris.
26. E. J. Anderson.
27. O. Yancey.
28. Hez. White.
29. Charles Qualls.
30. Marcellus Thomas.
31. Ernest Graves.
32. Martin Wright.
33. John Diggs.
34. Robt. Brown.
35. James Fortune
36. Flem Washington.
37. Major Jones.
38. W. F. Bird.
39. Geo. F. Jones.
40. James Parr.
41. Samuel Gray.
42. F. L. Johnson.
43. Simon Poole.
44. Frank Bratten.

The evidence tends

SUMMARY.

Total vote for Jackson		19,825
Deduct illegal votes cast for him		31
Correct vote of Jackson		19,794
Total vote for Smith		19,837
Deduct votes clearly proved to be illegal and cast for him	66	
Deduct those the evidence tends to show illegal	21	
		87
		19,750

On this basis the vote would be—

Jackson	19,794
Smith	19,750
Majority for Jackson	44

If we deduct only those votes which are clearly and distinctly proved illegal and cast for Smith the vote would be—

Jackson, total vote		19,825
Illegal votes		31
Total legal vote of Jackson		19,794
Smith, total vote	19,837	
Illegal votes	66	
Total legal vote of Smith		19,771
Clear majority for Jackson		23

The undersigned are therefore of the opinion that the contestee, Jackson, was duly elected, and we submit the following resolutions:

Resolved, That C. B. Smith was not elected a Representative in Congress from the Fourth district of West Virginia, and is not entitled to a seat therein.

Resolved, That James M. Jackson was duly elected a Representative in Congress from the Fourth district of West Virginia, and is entitled to retain his seat therein.

CHARLES F. CRISP.
JOS. H. OUTHWAITE.
CHAS. T. O'FERRALL.
LEVI MAISH.
L. W. MOORE.
R. P. C. WILSON.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 20.

MONUMENT TO MAJ. GEN. HENRY KNOX.

JANUARY 23, 1890.—Recommitted to the Committee on the Library and ordered to be printed.

Mr. O'NEILL, of Pennsylvania, from the Committee on the Library, submitted the following

REPORT:

[To accompany bill H. R. 14.]

The Committee on the Library, to whom was referred bill of H. R No. 14, for the erection of a monument to the memory of Maj. Gen. Henry Knox, at Thomaston, Me., having considered the same, report the bill back with a favorable recommendation.

No officer in the Revolutionary Army better deserves the recognition of his memory proposed by this bill on the part of the nation whose independence he fought to establish than Maj. Gen. Henry Knox. Born in Boston, in 1750, of Scotch and Irish stock, Knox espoused the patriot cause at the opening of the contest for independence, served as an aid to General Ward in the battle of Bunker Hill, and attracted the attention of General Washington as an artillerist and planner of fortifications from the day the latter assumed command of the Continental forces. From that time all through the war for independence General Knox became Washington's right-hand man, taking a prominent part in the operations which resulted in the evacuation of Boston by the British.

Afterwards General Knox took the management of Washington's artillery, and was actively engaged in the New Jersey campaign, sharing in the brilliant engagement at Princeton, taking a prominent part in the battle of Brandywine, conspicuously engaged in the battle of Monmouth in 1778, and participating prominently in the siege of Yorktown, for which he was promoted by Congress to the rank of major-general.

After the war he was made the first Secretary of War by President Washington, in which position he remained till 1795, when he resigned his position and took up his residence at Thomaston, Me., where his wife was interested in an estate which had fallen to her by inheritance.

Knox died at Thomaston in 1806, and his remains were interred in an inclosed yard in the village cemetery in the center of the town, where they still repose without the slightest memorial erected by the country which he did so much to make free and independent.

Your committee believe that it is the duty of the nation to erect a suitable monument to the memory of the trusted aid, artillery commander, and War Secretary of Washington, of whom Irving has written as the "brave, genial, generous Knox, never so happy as when by his side;" and therefore report the bill with a favorable recommendation.

CHAS. O'NEILL.
JOHN SANFORD.
R. H. M. DAVIDSON.

O

Mr. HALL, from the Committee on the P
following

REPORT:

[To accompany bill H. R.

The Committee on Public Lands, to who
R. 1452) for the relief of Christopher C. And
report:

This bill is to allow a patent to issue to sa
section of land therein described upon his
acre. He duly entered it as a homestead in
made improvements thereon of the value of
proved so subject to overflow from the stre
as to be uninhabitable and he consequently
comply with the law in respect to residence.

A similar bill was considered and recommen
mittee on the Public Lands at the last session
follows:

The Committee on Public Lands, to whom was refe
the relief of Christopher C. Andrews, submit the follo

This bill is to allow a patent to issue to said Andrew
scribed in the bill; for the reason that the requiremen
residence have all been complied with except one year, a
sequence of the land being subject to overflow it will
sible, to reside continuously on the land for the year re

The beneficiary has shown his good faith by makin
principally in buildings, to the extent and value of ove
entry and settlement upon the land as a homestead, in
being too low and wet for the purposes of tillage.
service of the United States, he was enabled to leave it
position, but for the reasons stated it would be a great
side upon it continuously for another year, as within
be overflowed, and the land is much more suitable for
for residence thereon.

There is no other applicant contesting for th
that he should have the

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 22.

MIAMI INDIANS OF INDIANA.

JANUARY 28, 1890.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

Mr. BOOTHMAN, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 253.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 253) to reimburse the Miami Indians of Indiana for money improperly withheld from them, submit the following report:

In 1854 the United States made a treaty with certain Indians known as the Miamis of Indiana, whereby it was agreed that certain persons belonging to said tribe, then residing in Indiana, should receive certain annuities and lands.

It was further expressly agreed that the number of persons thus residing was 302; and their names were at the time, by the United States officials, enrolled, in accordance with the terms of the treaty, in a list known as the "corrected list," made in the presence of and approved by the Commissioner of Indian Affairs then in office.

It was further expressly agreed that no persons other than these 302, together with the increase of their families and such other persons as should be received into tribal relation with them "by the consent of the said Miami Indians of Indiana, obtained in council, according to the custom of the Miami tribe of Indiana" (see book of Indian Treaties, p. 516), should be entitled to any portion of said annuities and lands.

It is admitted by the Attorney-General of the United States, in an official communication to Congress in 1867, as well as in the debates then had in Congress, that "the tribe in council never did, according to their custom, consent to the addition of those names or to their being paid," referring to the names of 73 persons other than the original 302 and the increase of their families, which were placed on the said "corrected list" by the Secretary of the Interior under the act of Congress of June 12, 1858, passed some four years after the treaty was made. (Congressional Globe, second session Thirty-ninth Congress, 1648, 1649.)

Under this act of 1858 the Secretary of the Interior, in October, 1858, placed on said "corrected list" 68 names of persons not received into the tribe, and 5 additional names in November, 1862; so that at that time 73 in all had been added who were not listed when the treaty was made, who had not been received into the tribe by action of its council, and who were not of the increase of the families of the original 302 listed persons. To these 73, who, with the increase of their families, in 1867 amounted to 119 persons, there was paid a ratable proportion of twelve annual payments of the annuities of the said original 302 Miami

Mr. SEBASTIAN. I offer another amendment as an

SEC. 7. *And be it further enacted*, That the Secretar by is, authorized and directed to pay to such person fore been excluded from the annuities of the tribe, in 1846, and since the treaty of 1854, and whose na plement to said treaty, their proportion of the tribal been excluded; and he is also authorized and direc the pay-list of said tribe, and cause their annuiti *Provided*, That the foregoing payments shall be in arising out of previous treaties. And said Secretar to cause to be located for such persons each 200 70,000 acres reserved by the second article of the tre amis, to be held by such persons by the same tenur are held which have been made under the third artic

Continuing, Mr. Sebastian says:

There is no appropriation from the Treasury in this tribal regulation between the Miamis of Indiana been improperly deprived of their annuities. It is to Interior to arrange and adjust the proportion of anr already due by treaty.

Mr. HUNTER. Is this on the recommendation of the

Mr. SEBASTIAN. The information is official and come entertain no doubt as to the improper exclusion of amendment, but they do not recommend it. They referable to Congress, and the Committee on Indian A islation by Congress.

Mr. FITCH. It is all right.

Mr. HUNTER. Does it commit us to make any app tribe to give to another?

Mr. FITCH. They are all the same tribe.

Mr. SEBSTIAN. This simply extends the pay-roll o include a few families who have heretofore been impr

The amendment was agreed to.

The foregoing is the whole of the discussio act of 1858 was passed. (Congressional Gl fifth Congress, p. 2822.)

Whether or not the act violated the ter was not discussed. That it violated this tr the original 302 listed Indians, and the incre one-fourth of their lands and annuities, witho their knowledge, and in direct violation of t treaty rights, was not even remotely hinted

went into Committee of the Whole House on the state of the Union to consider the Senate amendments to the the supplemental Indian appropriation bill. (Congressional Globe, first session Thirty-fifth Congress, p. 2910.)

The amendment (being act of 1858 under consideration) being in order, the consideration it received was as follows:

Mr. J. GLANCY JONES. Upon examination of the matter it was ascertained that some of the Miami Indians were omitted from the list. The amendment provides that they shall be reckoned in. It brings in a few Indians who were unjustly left out. The Committee of Ways and Means recommend a concurrence. The amendment was concurred in.

This was all the information given to the House. (Congressional Globe, first session Thirty-fifth Congress, pp. 2912, 2913.) Thus did Congress, in violation of the treaty of 1854, and of the rights of the persons to whom the treaty guarantied them almost without consideration, and certainly without adequate proof, parcel out the moneys and lands of the 302 to those who by that treaty had no possible right to any portion of either land or moneys.

This was all done on the assumption that these 73 added persons had been "improperly excluded" by the treaty of 1854. But if this was so, why were not the 302 given an opportunity to defend against the charge? Surely the truth would have lost nothing by such an investigation. But the charge was not true. At the time of the repeal of this act of 1858, viz, in February, 1867, it was clearly shown that the 73 were not entitled to be listed with the 302 for two reasons: First, They were not of full Miami blood. Second, Their right to annuities and lands rested with the remainder of the tribe, which had chosen to emigrate west of the Mississippi under treaty stipulations with the United States, made in 1846 and 1854, and it was unjust, as well as violative of the treaty of 1854 to list them with the 302. And after a very full discussion Congress repealed the law of 1858 on these grounds. (Congressional Globe, second session Thirty-ninth Congress, pp. 1647, 1650.

It is also worthy of notice that this repeal was had upon the motion of the Senate, where the mistaken action of 1858 first originated and came in by way of an amendment to the Indian appropriation bill of 1867, first proposed in the Senate (Congressional Globe, second session Thirty-ninth Congress, 1646, 1647). And the discussion in the Senate as to the propriety of the repeal was clear and full, and conclusively shows that the act of 1858 was a clear and palpable violation of the treaty of 1854, and upon the repeal of the law the 73 persons, together with the increase of their families, were dropped from the list and have been paid nothing since 1867.

But this action of Congress was only a partial reparation for the wrong committed by the act of 1858. It only stopped the wrongful payment. It did not make restitution of the lands and moneys wrongfully diverted. It is too late now to correct the wrong as to the lands so taken, for the rights of innocent purchasers have intervened and render that impracticable. But it is not too late to restore the moneys, which have never been refunded.

During most of the years from 1858 to 1867 the 302 strenously objected to the payments of which they now complain. A bill (H. R. 2099, first session Fiftieth Congress) was introduced into the House by the Hon. George W. Steele, then representing the district in which these Indians reside, and upon his inquiry of the Commissioner of

Respectfully call your attention to that prov
person other than those embraced in the corrected lis
Indiana, in the presence of the Commissioner of Indian
ing 302 names, as Miami Indians of Indiana, and the in
in said corrected list, shall be recipients of the payn
moneys, and interests hereby stipulated to be paid to
other persons shall be added to said list by the co
Indiana, obtained in council, according to the custom o

Your petitioners further show that the Secretary o
the third section of an act of Congress approved J
making supplementary appropriations for the current s
Indian department, and for fulfilling treaty stipulatio
for the year ending June 30, 1859," has caused to be ad
some sixty persons, as we are informed. That the sam
consent and against our wishes, and have been paid o
conceive that if the section of the act referred to was in
of Indiana, as it is construed by the Commissioner of
violation of said treaty.

Your petitioners, therefore, humbly pray that said thl
to, or so much thereof as violates their rights and appr
benefit of persons whom they do not recognize, may be r
heretofore diverted to that purpose may be refunded. A
tioners will ever pray, etc.

Done in council on the 1st day of February, 1859, at th
on the Mississinewa River, Miami County, Indiana.

(Signed with an x mark:)

John B. Bronellitt or Te-quah-yah, Peter Bondie or
o-me-sha. Pim-y-tinc-aw, Kil-oc-com-ach, La
maw, Waw-caw-co-now, Po-con-ge-ah, Len-e-
gnaw, Po-can-ge-ah, Ah-toh-a-toh, Po-me-to-si
pen-do-ciah, Ke-oh-cat-wah, Pa-len-swah, My-
We-shing Goodboo, So-mile-le-jes-ion, Sho-q
Tow-wah-quah-iey.

Hon. George W. Steele:

No written protest was filed by Miami Indians at each
Indians placed on roll in 1858 to participate in annuit
making payments, however, report that these Indians w

It may be claimed that these Indians occupie
to the United States Government, and therefore
to pass the act of 1858. notwithstanding

As to the amount that should be refunded, your committee fix it at the sum of $48,072.69; this being the amount as computed by the Interior Department in its communication to Hon. George W. Steele under date of February 14, 1887, as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, February 14, 1887.

SIR: In compliance with your verbal request, I submit the following statement in reference to certain Miami Indians of your State who were, under act of June 12, 1858 (U. S. Stats., 11, p. 332), enrolled with the 302 persons named in the Senate amendment to the treaty of 1854 (U. S. Stats., 10, p. 1099). * * *

Repeated efforts have been made in this office to trace the original 73 persons who were added to the Miami rolls of 1854–'55 through the rolls for the subsequent twelve payments, but owing to the brief manner of enrolling Indians for payment followed some years back, and the frequent changes in the family relations and manner of spelling Indian names, this was found to be impracticable; neither can the 119 persons finally excluded under the opinion of the Attorney-General be traced back for the same reasons, but it is believed that the total amount paid to these 73 or 119 persons named can be arrived at sufficiently close to satisfy all parties by the following method, viz: To find the number who drew a share of this money each year from 1854 to 1867, inclusive, we must first take from the 119 excluded 11 who were born subsequent to the payment of 1867, as appears by the records in this office, which leaves but 108 who actually shared in the payment of 1867 or could have shared in the other payments. To this 108 we add the original 73, making 181, which, divided by 2, gives an average enrollment for the thirteen years of 90½. In the same way we take the amount of one per capita share as the same appears on the rolls for each of the thirteen years in question, viz:

Fiscal year.	Amount.	Fiscal year.	Amount.
1854–'55	$41.49	1862–'63	$67.00
1855–'56	55.50	1863–'64	25.00
1856–'57	64.66	1864–'65	25.00
1857–'58	52.11	1865–'66	51.05
1858–'59	43.85	1866–'67	.....
1859–'60	48.71		
1860–'61	28.51	Total	531.19
1861–'62	28.51		

Which, multiplied by 90½, the average number of the 73 or 108 who shared in these payments, gives $48,072.69 as the total amount so paid, or say, in round numbers, $48,000, which is no doubt very nearly correct—I should think sufficiently so for Congress to act upon in case it is proposed to pay it or any part of it to the original 302 persons on the corrected list of 1854 and to their descendants. * * *

Respectfully,

J. D. C. ATKINS,
Commissioner.

Hon. GEORGE W. STEELE,
House of Representatives.

Regarding the claim set out in the bill under consideration for attorney fees, claimed to have been paid, your committee are of opinion it should not be refunded. We place this opinion on the ground that in this matter these Indians upon the one hand and the U. S. on the other are by this bill placed in the attitude of litigants before a court of equity. That the act of 1858, under which the payments complained of were made, was regularly, though as we believe mistakenly, passed; yet we are bound to presume it was an honest mistake; and as the fees were incurred principally in securing the legislation by which the 73 persons and the increase of their families were excluded from the roll, we think it should not in equity give the prevailing party the right to recover attorney fees.

Upon the question of interest on the sum herein recommended to be paid your committee think the case one in which interest should not

every kind arising out of this matter. W
the bill be amended as follows:

In line 5, of section 1, immediately after
the words "being 302 persons listed on t
treaty of June 5, 1854, and the increase of t

Also in lines 5 and 6 of said section 1, st
one thousand seven hundred and thirty" a
words "forty-eight thousand seventy-two
dredths."

Also in line 9 change the word "treaties"

Also in lines 9, 10, and 11 of said sectio
"or eighteen hundred and fifty-eight, or so
in equity be found to be due to said Miami I

Also add the following proviso to the end
recommended to be amended, viz:

Provided, That the sum hereby appropriated shall b
all claims in favor of said Miami Indians, or any of th
alleged violations of the terms of said treaty of June 5,
States Government.

Also strike out the whole of section 2 of s
section 3 of said bill strike out the figure "3"

And as thus amended we recommend the p

O.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 23.

RULES OF THE HOUSE OF REPRESENTATIVES, FIFTY-FIRST CONGRESS.

[See H. Mis. Doc. 87.]

February 6, 1890.—Recommitted to the Committee on Rules and ordered to be printed.

Mr. Cannon, from the Committee on Rules, submitted the following

REPORT:

The Committee on Rules, to whom was referred the rules of the House of Representatives of the Fiftieth Congress, together with sundry amendments proposed thereto, having had the same under consideration, report in lieu thereof the following code of rules and recommend its adoption as the rules of the House for the Fifty-first Congress:

Rule I.

DUTIES OF THE SPEAKER.

1. The Speaker shall take the chair on every legislative day precisely at the hour to which the House shall have adjourned at the last sitting, immediately call the members to order, and on the appearance of a quorum, cause the Journal of the proceedings of the last day's sitting to be read, having previously examined and approved the same.

2. He shall preserve order and decorum, and in case of disturbance or disorderly conduct in the galleries, or in the lobby, may cause the same to be cleared.

3. He shall have general control, except as provided by rule or law, of the hall of the House, and of the corridors and passages and of the unappropriated rooms in that part of the Capitol assigned to the use of the House until further order.

4. He shall sign all acts, addresses, joint resolutions, writs, warrants, and subpœnas of, or issued by order of, the House, and decide all questions of order, subject to an appeal by any member, on which appeal no member shall speak more than once, unless by permission of the House.

5. He shall rise to put a question, but may state it sitting; and shall put questions in this form, to wit: "As many as are in favor (as the question may be) say Ay"; and after the affirmative voice is expressed, "As many as are opposed say No"; if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one from each side of the question, to tell the members in the affirmative and negative; which being reported, he shall rise and state the decision.

sion to make such appointment, the Hou
Speaker *pro tempore*, to act during his abse

RULE II.

ELECTION OF OFFIC

There shall be elected by a *viva voce* vo
each Congress, to continue in office until t
and qualified, a Clerk, Sergeant-at-Arms, D
Chaplain, each of whom shall take an oath
of the United States, and for the true an
duties of his office to the best of his knowle
the secrets of the House; and each shall a
of his department provided for by law.

RULE III.

DUTIES OF THE CLE

1. The Clerk shall, at the commencement
Congress, call the members to order, procee
bers by States in alphabetical order, and,
Speaker or Speaker *pro tempore*, call the Hou
and decorum, and decide all questions of orde
member.

2. He shall make and cause to be printed
ber, or mailed to his address, at the comm
session of Congress, a list of the reports w
officer or Department to make to Congress, r
lution and page of the volume of the laws or
contained, and placing under the name of ea
required of him to be made.

3. He shall note all questions of order, w

each branch of the legislature of every State and Territory; preserve for and deliver or mail to each member and delegate an extra copy, in good binding, of all documents printed by order of either house of the Congress to which he belonged; attest and affix the seal of the House to all writs, warrants, and subpœnas issued by order of the House, certify to the passage of all bills and joint resolutions, make or approve all contracts, bargains, or agreements relative to furnishing any matter or thing, or for the performance of any labor for the House of Representatives, in pursuance of law or order of the House, keep full and accurate accounts of the disbursements out of the contingent fund of the House, keep the stationery account of members and delegates, and pay them as provided by law.

RULE IV.

DUTIES OF THE SERGEANT-AT-ARMS

1. It shall be the duty of the Sergeant-at-Arms to attend the House and the Committee of the Whole during their sittings, to maintain order under the direction of the Speaker or Chairman, and, pending the election of a Speaker or Speaker *pro tempore*, under the direction of the Clerk; execute the commands of the House, and all processes issued by authority thereof, directed to him by the Speaker; keep the accounts for the pay and mileage of members and delegates, and pay them as provided by law.

2. The symbol of his office shall be the mace, which shall be borne by him while enforcing order on the floor.

3. He shall give bond to the United States, with sureties to be approved by the Speaker, in the sum of fifty thousand dollars, for the faithful disbursement of all moneys intrusted to him by virtue of his office and the proper discharge of the duties thereof, and no member of Congress shall be approved as such surety.

RULE V.

DUTIES OF THE DOORKEEPER.

1. The Doorkeeper shall enforce strictly the rules relating to the privileges of the hall and be responsible to the House for the official conduct of his employés.

2. At the commencement and close of each session of Congress he shall take an inventory of all the furniture, books, and other public property in the several committee and other rooms under his charge, and report the same to the House, which report shall be referred to the Committee on Accounts to ascertain and determine the amount for which he shall be held liable for missing articles.

3. He shall allow no person to enter the room over the hall of the House during its sittings; and fifteen minutes before the hour for the meeting of the House each day he shall see that the floor is cleared of all persons except those privileged to remain, and kept so until ten minutes after adjournment.

RULE VI.

DUTIES OF THE POSTMASTER.

The Postmaster shall superintend the post-office kept for the accommodation of Representatives, Delegates, anc House, and be held responsible for the prompt and safe d mail.

RULE VII.

The Chaplain shall attend at the commencement of eac of the House and open the same with prayer.

RULE VIII.

OF THE MEMBERS.

1. Every member shall be present within the hall of t ing its sittings, unless excused or necessarily prevented; on each question put, unless he has a direct personal o terest in the event of such question.

2. Pairs shall be announced by the Clerk, after the co second roll-call, from a written list furnished him, and member making the statement to the Clerk, which lis lished in the Record as a part of the proceedings, immedi the names of those not voting: *Provided*, That pairs shal but once during the same legislative day.

RULE IX.

QUESTIONS OF PRIVILEGE.

Questions of privilege shall be, first, those affecting th House collectively, its safety, dignity, and the integrity ings; second, the rights, reputation, and conduct of me ually in their representative capacity only; and shall hav all other questions, except motions to adjourn.

RULE X.

OF COMMITTEES.

1. Unless otherwise specially ordered by the House shall appoint, at the commencement of each Congress, standing committees, viz:

On Elections, to consist of fifteen members.
On Ways and Means, to consist of thirteen members.
On Appropriations, to consist of fifteen members.
On the Judiciary, to consist of fifteen members.
On Banking and Currency, to consist of thirteen mem
On Coinage, Weights, and Measures, to consist of thi
On Commerce, to consist of seventeen members.

On Rivers and Harbors, to consist of fifteen members.

On the Merchant Marine and Fisheries, to consist of thirteen members.

On Agriculture, to consist of fifteen members.

On Foreign Affairs, to consist of thirteen members.

On Military Affairs, to consist of thirteen members.

On Naval Affairs, to consist of thirteen members.

On the Post-Office and Post-Roads, to consist of fifteen members.

On the Public Lands, to consist of thirteen members.

On Indian Affairs, to consist of thirteen members.

On the Territories, to consist of thirteen members.

On Railways and Canals, to consist of thirteen members.

On Manufactures, to consist of eleven members.

On Mines and Mining, to consist of thirteen members.

On Public Buildings and Grounds, to consist of thirteen members.

On Pacific Railroads, to consist of thirteen members.

On Levees and Improvements of the Mississippi River, to consist of thirteen members.

On Education, to consist of thirteen members.

On Labor, to consist of thirteen members.

On the Militia, to consist of thirteen members.

On Patents, to consist of thirteen members.

On Invalid Pensions, to consist of fifteen members.

On Pensions, to consist of thirteen members.

On Claims, to consist of fifteen members.

On War Claims, to consist of thirteen members.

On Private Land Claims, to consist of thirteen members.

On the District of Columbia, to consist of thirteen members.

On Revision of the Laws, to consist of thirteen members.

On Expenditures in the State Department, to consist of seven members.

On Expenditures in the Treasury Department, to consist of seven members.

On Expenditures in the War Department, to consist of seven members.

On Expenditures in the Navy Department, to consist of seven members.

On Expenditures in the Post-Office Department, to consist of seven members.

On Expenditures in the Interior Department, to consist of seven members.

On Expenditures in the Department of Justice, to consist of seven members.

On Expenditures in the Department of Agriculture, to consist of seven members.

On Expenditures on Public Buildings, to consist of seven members.

On Rules, to consist of five members.

... absence, or being excused by
member, and so on, as often as the case sl
mittee by a majority of its number elect a
death of a chairman, it shall be the dut
another.

4. The chairman shall appoint the clerk
subject to its approval, who shall be paid
House having first provided therefor.

RULE XI.

POWERS AND DUTIES OF C

All proposed legislation shall be referred
in the preceding rule, as follows, viz: Subjec

1. to the election of members: to the Com

2. to the revenue and the bonded debt of
Committee on Ways and Means;

3. to appropriation of the revenue for the
ment, as herein provided, viz: for legislat
cial expenses; for sundry civil expenses; f
defenses; for the District of Columbia; for
ciencies: to the Committee on Appropriatio

4. to judicial proceedings, civil and criminal
the Judiciary;

5. to banking and currency: to the Comm
rency;

6. to coinage, weights, and measures: to t
Weights, and Measures;

7. to commerce, life-saving service, and lig
propriations for life-saving service and light-
on Commerce;

11. to the relations of the United States with foreign nations, including appropriations therefor: to the Committee on Foreign Affairs;

12. to the military establishment and the public defense, including the appropriations for its support and for that of the Military Academy: to the Committee on Military Affairs;

13. to the naval establishment, including the appropriations for its support: to the Committee on Naval Affairs;

14. to the post-office and post-roads, including appropriations for their support: to the Committee on the Post-Office and Post-Roads;

15. to the lands of the United States: to the Committee on the Public Lands;

16. to the relations of the United States with the Indians and the Indian tribes, including appropriations therefor: to the Committee on Indian Affairs;

17. to territorial legislation, the revision thereof, and affecting Territories or the admission of States: to the Committee on the Territories;

18. to railways and canals, other than Pacific railroads: to the Committee on Railways and Canals;

19. to the manufacturing industries: to the Committee on Manufactures;

20. to the mining interests: to the Committee on Mines and Mining;

21. to the public buildings and occupied or improved grounds of the United States, other than appropriations therefor: to the Committee on Public Buildings and Grounds;

22. to the railroads and telegraphic lines between the Mississippi River and the Pacific coast: to the Committee on Pacific Railroads;

23. to the levees of the Mississippi River: to the Committee on Levees and Improvements of the Mississippi River;

24. to education: to the Committee on Education;

25. to and affecting labor: to the Committee on Labor;

26. to the militia of the several States: to the Committee on the Militia;

27. to patents, copyrights, and trade-marks: to the Committee on Patents;

28. to the pensions of the civil war: to the Committee on Invalid Pensions;

29. to the pensions of all the wars of the United States, other than the civil war: to the Committee on Pensions;

30. to private and domestic claims and demands, other than war claims, against the United States: to the Committee on Claims;

31. to claims arising from any war in which the United States has been engaged: to the Committee on War Claims;

32. to private claims to lands: to the Committee on Private Land Claims;

33. to the District of Columbia, other than appropriations therefor: to the Committee on the District of Columbia;

public officers; the abolishment of useles
crease of the pay of officers, shall all be su
of the nine standing committees on the
several Departments, as follows:

36. In the Department of State: to the
in the State Department;

37. In the Treasury Department: to the
in the Treasury Department;

38. In the War Department: to the Com
the War Department;

39. In the Navy Department: to the Com
the Navy Department;

40. In the Post-Office Department: to the C
in the Post-Office Department;

41. In the Interior Department: to the Co
in the Interior Department;

42. In the Department of Justice: to the C
in the Department of Justice;

43. In the Department of Agriculture: to t
tures in the Department of Agriculture;

44. On public buildings: to the Committee
lic Buildings;

45. All proposed action touching the rule
business, shall be referred to the Committee

46. Touching the expenditure of the cont
the auditing and settling of all accounts whi
by order of the House: to the Committee on

47. The ascertainment of the travel of men
made by the Committee on Mileage and re
Arms;

48. Touching the

any time on the matters herein stated, viz: The Committee on Rules, on rules, joint rules, and order of business; the Committee on Elections, on the right of a member to his seat; the Committee on Ways and Means, on bills raising revenue; the committees having jurisdiction of appropriations, the general appropriation bills; the Committee on Rivers and Harbors, bills for the improvement of rivers and harbors; the Committee on the Public Lands, bills for the forfeiture of land grants to railroad and other corporations, bills preventing speculation in the public lands, and bills for the reservation of the public lands for the benefit of actual and *bona fide* settlers; the Committee on the Territories, bills for the admission of new States; the Committee on Enrolled Bills, enrolled bills; the Committee on Invalid Pensions, general pension bills; the Committee on Printing, on all matters referred to them of printing for the use of the House or two houses; and the Committee on Accounts, on all matters of expenditure of the contingent fund of the House.

52. No committee shall sit during the sitting of the House without special leave.

RULE XII.

DELEGATES.

The Speaker shall appoint from among the Delegates one additional member on each of the following committees, viz: Coinage, Weights, and Measures; Agriculture; Military Affairs; Post-Office and Post-Roads; Public Lands; Indian Affairs; Territories; Private Land Claims, and Mines and Mining; and they shall possess in their respective committees the same powers and privileges as in the House, and may make any motion except to reconsider.

RULE XIII.

CALENDARS AND REPORTS OF COMMITTEES.

1. There shall be three calendars of business reported from committees, viz:

First. A Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred public bills.

Second. A House Calendar, to which shall be referred all bills of a public character not raising revenue nor directly or indirectly appropriating money or property.

Third. A Calendar of the Committee of the Whole House, to which shall be referred all bills of a private character.

2. All reports of committees, except as provided in clause 51 of Rule XI, together with the views of the minority, shall be delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker, in accordance with the foregoing clause.

member who is first to speak; and n
than one hour in debate on any question i
except as further provided in this rule.

3. The member reporting the measure
committee may open and close, where ge
thereon; and if it shall extend beyond one
one hour to close, notwithstanding he may

4. If any member, in speaking or otherw
the House, the Speaker shall, or any memb
in which case he shall immediately sit down
tion of another member, to explain, and th
to, decide on the case without debate; if the
member called to order, he shall be at liberty
wise; and, if the case require it, he shall be
punishment as the House may deem proper.

5. If a member is called to order for wor
member calling him to order shall indicate th
they shall be taken down in writing at the Cl
to the House; but he shall not be held to ans
censure of the House therefor, if further deb
intervened.

6. No member shall speak more than once
out leave of the House, unless he be the mov
of the matter pending, in which case he shall
reply, but not until every member choosing t

7. While the Speaker is putting a question
no member shall walk out of or across the H
speaking, pass between him and the Chair;
the House no member shall wear his hat, or
during the call of the roll or the counting of
floor of the House;

two such members from the same State, the whole name shall be called; and after the roll has been once called, the Clerk shall call in their alphabetical order the names of those not voting; and thereafter the Speaker shall not entertain a request to record a vote or announce a pair.

2. In the absence of a quorum, fifteen members, including the Speaker, if there is one, shall be authorized to compel the attendance of absent members, and in all calls of the House the doors shall be closed, the names of the members shall be called by the Clerk, and the absentees noted; and those for whom no sufficient excuse is made may, by order of a majority of those present, be sent for and arrested, wherever they may be found, by officers to be appointed by the Sergeant-at-Arms for that purpose, and their attendance secured and retained; and the House shall determine upon what condition they shall be discharged. Members who voluntarily appear shall, unless the House otherwise direct, be immediately admitted to the hall of the House, and they shall report their names to the Clerk to be entered upon the Journal as present.

3. On the demand of any member, or at the suggestion of the Speaker, before the second roll-call is entered upon, the names of members [sufficient to make a quorum] in the hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal and reported to the Speaker with the names of the members voting, and be counted and announced in determining the presence of a quorum to do business.

RULE XVI.

ON MOTIONS, THEIR PRECEDENCE, ETC.

1. Every motion made to the House and entertained by the Speaker shall be reduced to writing on the demand of any member, and shall be entered on the Journal with the name of the member making it, unless it is withdrawn the same day.

2. When a motion has been made, the Speaker shall state it or (if it be in writing) cause it to be read aloud by the Clerk before being debated, and it shall then be in possession of the House, but may be withdrawn at any time before a decision or amendment.

3. When any motion or proposition is made, the question, Will the House now consider it? shall not be put unless demanded by a member.

4. When a question is under debate no motion shall be received but to adjourn, to lay on the table, for the previous question (which motions shall be decided without debate), to postpone to a day certain, to refer, or to amend, or postpone indefinitely; which several motions shall have precedence in the foregoing order; and no motion to postpone to a day certain, to refer, or to postpone indefinitely, being decided, shall be again allowed on the same day at the same stage of the question.

5. The hour at which the House adjourns shall be entered on the Journal.

6. On the demand of any member, before the question is put, a ques-

... motion that the House adjourn, but
announced he shall not entertain any other
is taken on suspension.

9. At any time after the reading of the Ji
by direction of the appropriate committees,
solve itself into the Committee of the Whol
Union for the purpose of considering bills
appropriation bills.

10. No dilatory motion shall be entertaine

RULE XVII.

PREVIOUS QUESTIO

1. There shall be a motion for the previo
ordered by a majority of members present, if
effect to cut off all debate and bring the Hou
the immediate question or questions on whicl
ordered. The previous question may be asl
single motion, a series of motions allowabl
amendment or amendments, or may be made
motions or amendments and include the bill t
It shall be in order, pending the motion for, o
tion shall have been ordered on its passage, f
tain and submit a motion to commit, with, or
standing or select committee.

2. A call of the House shall not be in orde
tion is ordered, unless it shall appear upon
Speaker that a quorum is not present.

3. All incidental questions of order arisin
for the previous question, and pending such
whether on appeal or otherwise, without deba

the said succeeding day without the consent of the House, and thereafter any member may call it up for consideration: *Provided*, That such motion, if made during the last six days of a session, shall be disposed of when made.

2. No bill, petition, memorial, or resolution referred to a committee, or reported therefrom for printing and recommitment, shall be brought back into the House on a motion to reconsider; and all bills, petitions, memorials, or resolutions reported from a committee shall be accompanied by reports in writing, which shall be printed.

RULE XIX.

OF AMENDMENTS.

When a motion or proposition is under consideration a motion to amend and a motion to amend that amendment shall be in order, and it shall also be in order to offer a further amendment by way of substitute, to which one amendment may be offered, but which shall not be voted on until the original matter is perfected, but either may be withdrawn before amendment or decision is had thereon.

RULE XX.

OF AMENDMENTS OF THE SENATE.

Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the state of the Union if, originating in the House, it would be subject to that point.

RULE XXI.

ON BILLS.

1. Bills and joint resolutions on their passage shall be read the first time by title and the second time in full, when, if the previous question is ordered, the Speaker shall state the question to be: Shall the bill be engrossed and read a third time? and if decided in the affirmative it shall be read the third time by title, unless the reading in full is demanded by a member, and the question shall then be put upon its passage.

2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.

3. No bill for the payment or adjudication of any private claim against the Government shall be referred, except by unanimous consent, to any other than the following-named committees, viz: To the Committee on Invalid Pensions, to the Committee on Pensions, to the Committee on Claims, to the Committee on War Claims, to the Committee on Private

memorials and bills of a private nature, e
ment of the Speaker, are of an obscene or i
entered on the Journal with the names
them, and the Clerk shall furnish a transcr
cial reporters of debates for publication in

2. Any petition or memorial or private bi
shall be returned to the member from whom
tions and private bills which have been ina
by the direction of the committee having
properly referred in the manner originally pr
reference of a petition or private bill under t
jurisdiction upon the committee to consider

3. All other bills, memorials, and resolutic
delivered, indorsed with the names of membe
Speaker, to be by him referred, and the titl
shall be entered on the Journal and printed
day, and correction in case of error of refere
House, in accordance with Rule XI, within th
the reading of the Journal, by unanimous c
committee claiming jurisdiction, or on the r
which the bill has been erroneously referred.

4. When a bill, resolution, or memorial is
these words shall be entered upon the Journal

5. All resolutions of inquiry addressed to t
partments shall be reported to the House w
entation.

RULE XXIII.

OF COMMITTEES OF THE WH

1. In all cases, in forming a Committee
Speaker shall leave his

report the names of the absentees to the House, which shall be entered on the Journal; but if on such call a quorum shall appear, the committee shall thereupon resume its sitting without further order of the House.

3. All motions or propositions, originating either in the House or Senate, involving a tax or charge upon the people, all proceedings touching appropriations of money, or bills making appropriations of money or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced.

4. In Committees of the Whole House business on their calendars may be taken up in regular order, or in such order as the committee may determine, unless the bill to be considered was determined by the House at the time of going into committee, but bills for raising revenue, general appropriation bills, and bills for the improvement of rivers and harbors shall have precedence.

5. When general debate is closed by order of the House, any member shall be allowed five minutes to explain any amendment he may offer, after which the member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon; but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment, and neither an amendment nor an amendment to an amendment shall be withdrawn by the mover thereof unless by the unanimous consent of the committee.

6. The committee may, by the vote of a majority of the members present, at any time after the five minutes' debate has begun upon proposed amendments to any section or paragraph of a bill, close all debate upon such section or paragraph, or, at its election, upon the pending amendments only (which motion shall be decided without debate); but this shall not preclude further amendment, to be decided without debate.

7. A motion to strike out the enacting words of a bill shall have precedence of a motion to amend; and, if carried, shall be considered equivalent to its rejection. Whenever a bill is reported from a Committee of the Whole with an adverse recommendation and such recommendation is disagreed to by the House the bill shall stand recommitted to the said committee without further action by the House. But before the question of concurrence is submitted it is in order to entertain a motion to refer the bill to any committee, with or without instructions, and when the same is again reported to the House it shall be referred to the Committee of the Whole without debate.

8. The rules of proceeding in the House shall be observed in Committees of the Whole House so far as they may be applicable.

Fifth. Unfinished business.

Sixth. The morning hour for the consider committees.

Seventh. Motions to go into Committee c state of the Union.

Eighth. Orders of the day.

2. Business on the Speaker's table shall be

Messages from the President, reports and heads of Departments, and other communic House, and bills, resolutions, and messages referred to appropriate committees without with Senate amendments which do not requir mittee of the Whole may be at once disposed termine; and Senate bills substantially the sar favorably reported by a committee of the Ho be considered in Committee of the Whole, ma the same manner on motion directed to be mac

3. The consideration of the unfinished busin may be engaged at an adjournment, except b hour, shall be resumed as soon as the business finished, and at the same time each day thereaf the consideration of all other unfinished bus whenever the class of business to which it b under the rules.

4. After the unfinished business has been shall call each standing committee in regula committees, and each committee when named ation any bill reported by it on a previous da endar, and if the Speaker shall not complete tees before the House passes to other business call where he left off, giving preference

the Union to consider a particular bill, to which motion one amendment only, designating another bill, may be made; and if either motion be determined in the negative, it shall not be in order to make either motion again until the disposal of the matter under consideration or discussion.

6. On Friday of each week, after the unfinished business has been disposed of, it shall be in order to entertain a motion that the House resolve itself into the Committee of the Whole House to consider business on the Private Calendar; and if this motion fails, then public business shall be in order as on other days.

RULE XXV.

PRIORITY OF BUSINESS.

All questions relating to the priority of business shall be decided by a majority without debate.

RULE XXVI.

PRIVATE AND DISTRICT OF COLUMBIA BUSINESS.

1. Friday in every week shall be set apart for the consideration of private business, unless otherwise determined by the House.

2. The House shall meet every Friday evening at 8 o'clock for the consideration of private pension bills only.

3. The second and fourth Mondays in each month, after the disposal of such business on the Speaker's table as requires reference only, shall, when claimed by the Committee on the District of Columbia, be set apart for the consideration of such business as may be presented by said committee.

RULE XXVII.

UNFINISHED BUSINESS OF THE SESSION.

All business before committees of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

RULE XXVIII.

CHANGE OR SUSPENSION OF RULES.

1. No standing rule or order of the House shall be rescinded or changed without one day's notice of the motion therefor, and no rule shall be suspended except by a vote of two-thirds of the members present, except to fix a day for the consideration of a bill or resolution already favorably reported by a committee on motion directed to be made by such committee, which shall require only a majority vote of the

given to debate in favor of, and one-half t
such proposition, and the same right of deb
ever the previous question has been ordered
there has been no debate.

RULE XXIX.

CONFERENCE REPOR

The presentation of reports of committees
be in order except when the Journal is bei
being called, or the House is dividing on any
shall accompany every such report a detailed
plicit to inform the House what effect such am
will have upon the measures to which they re

RULE XXX.

SECRET SESSION.

Whenever confidential communications are
ident of the United States, or whenever the Spe
inform the House that he has communications
to be kept secret for the present, the House s
sons except the members and officers thereo
the reading of such communications, the d
thereon, unless otherwise ordered by the Hou

RULE XXXI.

READING OF PAPERS

When the reading of a paper other than one
called to give a final vote is demanded, and th
any member, it shall be determined

material, equal to the number of Members and Delegates, which balls shall be consecutively numbered and thoroughly intermingled, and at such hour as shall be fixed by the House for that purpose, by the hands of a page, draw said balls one by one from the box and announce the number as it is drawn, upon which announcement the Member or Delegate whose name on a numbered alphabetical list shall correspond with the number on the ball shall advance and choose his seat for the term for which he is elected.

2. Before said drawing shall commence each seat shall be vacated and so remain until selected under this rule, and any seat having been selected shall be deemed forfeited if left unoccupied before the call of the roll is finished, and whenever the seats of Members and Delegates shall have been drawn, no proposition for a second drawing shall be in order during that Congress.

RULE XXXIII.

HALL OF THE HOUSE.

The hall of the House shall be used only for the legislative business of the House, and for the caucus meetings of its members, except upon occasions where the House by resolution agree to take part in any ceremonies to be observed therein; and the Speaker shall not entertain a motion for the suspension of this rule.

RULE XXXIV.

OF ADMISSION TO THE FLOOR.

The persons hereinafter named, and none other, shall be admitted to the hall of the House or rooms leading thereto, viz: The President and Vice-President of the United States and their private secretaries, Judges of the Supreme Court, members of Congress and members-elect, contestants in election cases during the pendency of their cases in the House, the Secretary and Sergeant-at-Arms of the Senate, heads of Departments, foreign ministers, governors of States, the Architect of the Capitol, the Librarian of Congress and his assistant in charge of the law library, such persons as have, by name, received the thanks of Congress, ex-members of the House of Representatives who are not interested in any claim or directly in any bill pending before Congress, and clerks of committees, when business from their committee is under consideration; and it shall not be in order for the Speaker to entertain a request for the suspension of this rule or to present from the chair the request of any member for unanimous consent.

RULE XXXV.

OF ADMISSION TO THE GALLERIES.

The Speaker shall set aside a portion of the west gallery for the use of the President of the United States, the members of his Cabinet, Jus-

RULE XXXVI

OFFICIAL AND OTHER R

1. The appointment and removal, for ca
of the House, including stenographers of c
of the execution of their duties, shall be ves

2. Stenographers and reporters, other th
the House, wishing to take down the debat
admitted by the Speaker to the reporters'
chair, under such regulations as he may, fro
and he may assign two seats on the floor to A
one to The United Press reporter, and one to
tion reporter, and regulate the occupation of

RULE XXXVII.

PAY OF WITNESSES

The rule for paying witnesses subpœnaed to
or either of its committees, shall be as follows
shall attend, the sum of two dollars; for ea
coming to or going from the place of examina
each way; but nothing shall be paid for trav
been summoned at the place of trial.

RULE XXXVIII.

PAPERS.

The clerks of the several committees of
three days after the final adjournment of a
Clerk of the House

RULE XXXIX.

WITHDRAWAL OF PAPERS

No memorial or other paper presented to the House shall be withdrawn from its files without its leave, and if withdrawn therefrom, certified copies thereof shall be left in the office of the Clerk; but when an act may pass for the settlement of a claim, the Clerk is authorized to transmit to the officer charged with the settlement thereof the papers on file in his office relating to such claim, or may loan temporarily to any officer or Bureau of the Executive Departments any papers on file in his office relating to any matter pending before such officer or Bureau, taking proper receipt therefor.

RULE XL.

BALLOT.

In all other cases of ballot than for committees, a majority of the votes given shall be necessary to an election, and where there shall not be such a majority on the first ballot the ballots shall be repeated until a majority be obtained; and in all balloting blanks shall be rejected and not taken into the count in enumeration of votes or reported by the tellers.

RULE XLI.

MESSAGES.

Messages received from the Senate and the President of the United States, giving notice of bills passed or approved, shall be entered in the Journal and published in the Record of that day's proceedings.

RULE XLII.

EXECUTIVE COMMUNICATIONS.

Estimates of appropriations, and all other communications from the Executive Departments, intended for the consideration of any committees of the House, shall be addressed to the Speaker and by him submitted to the House for reference.

RULE XLIII.

QUALIFICATIONS OF OFFICERS AND EMPLOYÉS.

No person shall be an officer of the House, or continue in its employment, who shall be an agent for the prosecution of any claim against the Government, or be interested in such claim otherwise than as an original claimant; and it shall be the duty of the Committee on Accounts to inquire into and report to the House any violation of this rule.

There shall be printed 500 copies of each
which 25 shall be deposited in the office of t
the remainder shall be deposited in the doc
for the use of members; and there shall be
private bill, which shall be deposited in the do
for the use of members. Motions to print addi
report, resolution, or other public document
Committee on Printing; and the report of the
be accompanied by an estimate of the proba
ordered by the House, no bill, resolution, or ot
by a committee shall be reprinted unless the s
Calendar.

The committee have taken the code of rules o
the close of the last Congress as the starting
labors upon the theory that the greater portion
as it was in a large degree (and as any code
rules prescribing the duties of officers and emp
other matters almost wholly of detail, would r
change.

As a matter of fact, therefore, the committee
whatever in twenty-nine of the forty-seven ru
of the Fiftieth Congress. In some of the remai
changes are slight and unimportant save in
while the important changes made are confined
rules. The code reported includes, as Rules X a
on the 9th of December last, creating the stan
committees of the House and defining their p
slight changes, which will be noted, and for c
and comparison the committee have

"Duties of the Clerk," in which the committee have stricken out all after the word "made," in line 8, for the reason that as the Speaker's table is cleared each day, under Rule XXIV, there are no resolutions and bills to "make a weekly statement of."

In clause 1 of Rule IV the committee have inserted an amendment requiring the Sergeant-at-Arms to attend the sittings of the Committees of the Whole and preserve order under the direction of the chairman.

To clause 3 of Rule V the committee have added the words "and kept so until 10 minutes after adjournment." The first part of the addition has been twice adopted as a standing order of the House, and prevents a crowd from rushing in upon the floor after adjournment as members are preparing to retire from the hall. It also affords employés an opportunity to gather up and preserve the books, letters, and papers left by members on their desks.

In Rule VIII the committee have stricken out the words "on motion made before division or the commencement of the roll-call, and decided without debate, he shall be excused, or."

The first rule on this subject was adopted on the 7th of April, 1789, First Congress, and is as follows: "Every member who shall be in the House when the question is put shall give his vote unless the House shall excuse him." On the 14th of September, 1837 (Twenty-fourth Congress), the following provision was added, viz:

"All motions to excuse a member from voting shall be made before the House divides, or before the call of the yeas and nays is commenced; and any member requesting to be excused from voting may make a brief verbal statement of the reasons for making such request, and the question shall then be taken without further debate."

That portion of the foregoing provision which allowed a brief verbal statement of reasons to be given by any member for requesting to be excused from voting was rescinded on January 2, 1847 (Twenty-ninth Congress), for the reason that it was used as a dilatory proceeding, besides affording opportunity for members to debate the merits of the pending proposition. Being made the duty of each member to be present and vote on every question put unless he has a direct personal or pecuniary interest in the event of the pending question, the committee are of opinion that under the recent practice of the House, and in view of rulings of the Chair on this point, it rests with the member alone, and not with the Speaker, to decide as to the character of the "personal or pecuniary interest of the member" in the pending question. This was the ruling of Speaker Randall in the second session, Forty-fourth Congress, and has been followed by the Chair in all cases which have since arisen.

In Rule IX, "Questions of privilege," the committee have stricken out the motions to adjourn over and for a recess. In their opinion, when a question of privilege affecting the rights of the House collectively or of an individual member is presented, it should not only take precedence of all other questions, except motions to adjourn, but it should not be possible to intervene dilatory motions which might delay and possibly prevent a decision of the House on the question of privilege presented.

In Rule X the only changes made are those conforming to the previous action of the House in increasing the membership of the Committee on Commerce to seventeen members and the creation of the Committee on Expenditures in the Department of Agriculture in clause 1, and the insertion in clause 2 of the words "and conference" after the word "select."

[illegible] last in respect to the distribution of
message.

In clause 44 (now 45) the words "and orde
serted. A strict construction of the old rule w
Rules to reporting as privileged questions o
the rules and joint rules and exclude resol
of business, although it has been held that
lutions would be *pro tanto* a change of th
posed merely incorporates into the rule the re

In clause 51 (formerly 50) the Committee q
as one of the committees privileged to repo
revision of the rules in the Forty-sixth C
Rules had always been a select committee cr
commencement of each Congress, and by suc
to report at any time on amendments to or re
that revision it was made a standing commit
in the list of committees privileged to report a
that it had such right without specific rule.
have also been inserted, viz: After the word
line 11, the words "the Committee on Territ
sion of new States," and after the words "enr
line, the words "the Committee on Invalid P
bills."

The following has been added to Rule XIII

"All reports of committees, except as provi
XI, together with the views of the minority,
Clerk for printing and reference to the prope
rection of the Speaker in accordance with tl

As the previous clause fixes absolutely th
shall be referred, and as it is unlikely that
as to the proper reference not provided for in
it is in the opinion of the committee an unn
read the titles of the various bills reported, w
rule to one of the three calendars of the Hous

The committee have inserted as a new claus
ing:

"3. On the demand of any member or

Constitution would ordinarily be under the control of the Speaker, who would derive his information from his own senses or by the aid of a clerk, or in any way which would satisfy his mind of the accuracy of the count. Under our system of roll-calls it has been deemed more convenient to ascertain and announce the votes of members and the presence of those who refuse to vote at the same time and by the same means.

In clause 4 of Rule XVI (which establishes the order of motions, etc.) the motions to adjourn over and for a recess have been omitted, and the same motions have been omitted from clause 5.

Clause 9 has been changed so as to make the motion to go into the Committee of the Whole House on the state of the Union to consider bills raising revenue and general appropriations at any time after the reading of the Journal instead of, as in the old rule, after the expiration of the morning hour. If the House desires to proceed with the order of business specified in Rule XXIV it can vote down the motion, which would be in order after each class of business named therein has been disposed of.

The committee have added as a new clause (10) the following, viz:

"No dilatory motion shall be entertained by the Speaker."

This clause is merely declaratory of parliamentary law. There are no words which can be framed which will limit members to the proper use of proper motions. Any motion the most conducive to progress in the public business or the most salutary for the comfort and convenience of members may be used for purposes of unjust and oppressive delay. The majority may be kept in session for a long time against reason and good sense, sometimes at the whim of a single member and sometimes for a still longer period at the will of one fifth who are misusing the provision of the Constitution for yeas and nays, by the aid of simple motions proper in themselves but which are improperly used.

In the early days such prostitution of legitimate motions, caused by anger, willfullness, and party zeal, was not so much as named among legislators. To-day the abuse has grown to such proportions that the parliamentary law which governs American assemblies has found it necessary to keep pace with the evil and to enable the majority, by the intervention of the presiding officer, to meet, by extraordinary means, the extraordinary abuse of power on the part, sometimes, of a very few members. Why should an assembly be kept from its work by motions made only to delay and to weary, even if the original design of the motion was salutary and sensible? Why should one-fifth even be entitled to waste a half hour of themselves and of four other fifths by a motion to adjourn when the majority manifestly do not want to adjourn?

If the suggestion should be made that great power is here conferred, the answer is that as the approval of the House is the very breath in the nostrils of the Speaker, and as no body on earth is so jealous of its liberties and so impatient of control, we may be quite sure that no arbitrary interruption will take place, and, indeed, no interruption at all, until not only such misuse of proper motions is made clearly evident to the world, but also such action has taken place on the part of the House as will assure the Speaker of the support of the body whose wishes are his law. So that in the end it is a power exercised by the House through its properly constituted officer.

Clause 1 of Rule XVII has been amended by striking out the words "to its engrossment and third reading, and then on renewal and second

of two members, one to move, the other
December, 1811, it was placed on the sam
nays; that is, when ordered by 15 of the m
mained until February 24, 1812, when it wa
of a majority. The effect of it was to bring
the main question, thus requiring two vo
was in order save one motion to adjourn.
dered the House then voted first on the am
ing. The rule as it stood at the close of the
to that form in the revision in the Forty-si

In clause 1 of Rule XVIII the motions to
have also been omitted, conforming to the
former Rule IX, and clauses 4 and 5 of Rul

Clause 1 of Rule XXI has been omitt
clause 3 of Rule XXII, and former clause 2
for.

Clause 4 of this rule has also been omitte
for the further reason that the general act
S., vol. 23, page 3), declaring all public roads
has obviated the necessity for these acts,
this class have been introduced or passed.

Clause 5 has been changed to clause 3,
added thereto: "The Committee on Indian

The following have been added to Rule X
viz:

3. All other bills, memorials, and resoluti
delivered, indorsed with the names of membe
Speaker, to be by him referred, and the tit
shall be entered on the Journal and printed
day, and correction in case of error of refer
House in accordance with Rule XI by unani
of a committee claiming jurisdiction, or on t
to which the bill has been erroneously referr

The committee have transferred as an appi
and made it clause 4 of this rule, and have
of former clause 1 of Rule XXIV and mad
follows, viz:

members of long service, looking to a reduction of the number necessary for a quorum in the Committee of the Whole, but the issue has never been presented to the House, owing to the fact that until recently it has never been confronted with the question of the want of a constitutional quorum through the refusal of members present in the House to vote when their names were called in the House, or by division in the Committee of the Whole, thus breaking a quorum. It has never been made a political question and never should be. It goes directly to the bottom of the question of transacting business in the Committee of the Whole.

The Constitution provides, Article I, section 5, clause 1, that "*a majority of each House shall constitute a quorum.*"

Neither House of Congress has ever had a rule fixing the number of a quorum in the Committee of the Whole, but from the First Congress to the present the practice has been to require the same number as in the House. The quorum of the House of Commons (consisting of 670 members) is 40. The Committee of the Whole, like a standing or select committee, has merely advisory powers and jurisdiction. Its action concludes nothing, and must be reported to the House, which approves or rejects as it pleases. The same principle is true with respect to a quorum of standing and select committees. The House has never adopted a rule on this subject, and it has been a common practice for such committees in arranging its days of meeting, order of business, etc., to fix the number of its quorum, which is less than a majority of its whole number. So far, therefore, as the constitutional or legal question is concerned it has never been denied or questioned that it was entirely competent for the House to select any number it might please as a quorum of the Committee of the Whole. The only question involved is one purely of legislative expediency and propriety.

The reason that the issue has never heretofore been presented is due entirely to the fact that until recent years members have not sat in their seats in the House and refused to vote when their names were called.

The House, for convenience, commits temporarily its jurisdiction to standing and select committees. It never parts with or permanently surrenders it. That jurisdiction so committed is returned to the House with the bill or proposition, and is again referred by the House for convenience to a Committee of the Whole. That the action of that committee is purely preliminary and advisory is demonstrated by the fact that no proposition pending therein can be laid upon the table; that the previous question can not be ordered therein; that a motion to reconsider can not be made; that the yeas and nays can not be taken, and, finally, that it can not adjourn.

The action of the Committee of the Whole being, therefore, purely advisory and concluding nothing, it is clear that this provision can not be in contravention of the Constitution—which is silent on the subject—and is in harmony with the well-recognized principles and practice of the English Parliament, the original sources of our parliamentary rules and practice and of modern constitutional governments.

Rule XXIV has been so completely reconstructed that a somewhat detailed statement is necessary to an understanding of the changes made. Instead of former clause 1, requiring on Monday a call of States and Territories for the introduction of bills, etc., it has been proposed by clauses 1 and 3 of Rule XXII to refer all bills, etc., to appropriate committees as required under Rule XI, and clause 5 of Rule XXI by

"business on the Speaker's table shall be

"Messages from the President, reports an
heads of Departments, and other commun
House, and bills, resolutions, and messages
referred to appropriate committees withou
with Senate amendments, except revenue a
bills and river and harbor bills, may be at
House may determine; as may, also, Sena
same as House bills already favorably report
the House on motion directed to be made by

The committee do not deem it necessary to
the amendment of former clause 2 than that
for the House to complete the legislation u
substantially passed. The amendments of t
most cases usually are unimportant, and relat
the substance of the bill. Under well-recogni
of legislative procedure this enables the Hous
lation or put the matter into conference.

It will be noticed, however, that if either th
the House bill or the original Senate bill is su
under Rule XX and clause 3 of Rule XXIII it
and there receive its first consideration.

Clause 3 of the proposed code restores un
position and privilege it occupied prior to th
the Forty-sixth Congress, giving it the status
in the House for nearly a century and to which
liamentary law and practice, it is legitimately

After unfinished business has been disposed
for action by the House, under direction of co
public character which do not appropriate mo
the passage of much legislation of local valu
importance.

This period must be sixty minutes, and at
may be much longer. At the end of sixty min
has the option to go to the Committee of t
state of the Union, either generally or to co

Rule XXVIII, relating to suspension of

Clause 3 of the same rule has been changed by striking out after the words "call of States and Territories" and inserting in lieu thereof the words "after the disposal of such business on the Speaker's table as requires reference only."

None of the remaining rules are changed except Rule XXXVI, which is amended by giving a seat on the floor to a representative of the United Press and the Press News Association.

Former Rule XLV has been omitted, for the reason that it has become a well-settled principle that one House can not adopt a rule binding or controlling a succeeding House.

Your committee have thus gone over briefly the proposed new code of rules. They believe, if followed out in good faith, it will at once enable the House to have due control over its business and at the same time provide those safeguards of deliberation and debate which will enable the House to act wisely.

undersigned, constituting the minor
Rules, being unable to concur with the majo
proposed to be made in the rules of the H
brief statement of their views.

The report of the majority sets forth th
rules heretofore prevailing in the House, an
sary to enumerate them here. It will be see
are comparatively unimportant there are oth
very materially change the methods of tr
House and in a large measure deprive the
of their proper power and influence in the
legislation

Under clause 4 of Rule XXIV no bill on th
reached for consideration unless called up
ported it, and under clause 5 of the same ru
can make an original motion for the purpos
ticular bill in the Committee of the Whole
Union. When, however, a motion has bee
committee to go into the Committee of the
Union to consider a particular bill an individu
amend it by designating another bill. This i
under the proposed rule; and it is evident th
great disadvantage. He will be compelled to
not simply on its merits, but in opposition t
pending; and he will be compelled, moreove
power of two of the committees of the Ho
committee which already has under consid
by it from the House Calendar and the com
original motion to go into the Committee of
exclusive right to move that the House resolv
tee of the Whole on the state of the Union to
is given to a committee, the exclusive right to
ignating another bill is not given to the in
amendment may be offered by the committee
ber under the rule, as proposed.

When a motion to go into the Committee o
of the Union generally or a motion made by di
to go into Committee of the

pending, whether it be for a day or a week, no other committee can call up a bill; nor can the House, as just stated, proceed to consider any other public bill except bills raising revenue or general appropriation bills. Under the rules as they existed prior to the Forty-sixth Congress there was a morning hour for reports from committees, and such reports could be considered when made, but the hour expired at the end of sixty minutes and the House then proceeded to take up other business. During the last Congress there was also an hour for the consideration of bills called up by committees, but it lasted sixty minutes only, and was therefore free from the objections we have suggested to the rule now proposed.

If the proposed rules are adopted there will be one way only in which an individual member, not acting by direction of a committee, can secure consideration of a bill, and that is by a motion to suspend the rules. But even in that case he is not placed upon an equal footing with a committee or with a member who makes a motion by direction of a committee. Clause 1 of Rule XVIII, as proposed, provides that when a motion is made by direction of a committee to suspend the rules and fix a day for the consideration of a bill previously reported by it a majority vote shall be sufficient to agree to the motion, but in case an individual member makes a motion, a vote of two-thirds is required.

We are unable to discover any sufficient reason for this discrimination against members who may not be fortunate enough to secure the cooperation of committees in making their motions. If a majority vote is sufficient to suspend the rules and fix a day for the consideration of a bill when the motion is made by direction of a committee, certainly the same vote ought to be sufficient when made by an individual member upon his responsibility, and in behalf of his constituents. The only reasonable explanation for this discrimination is that it is the policy of the proposed rules to suppress the individual member of the House as far as possible and increase the powers of the committees. In fact, under the proposed rules, the individual member will scarcely have power to make a motion of any kind, except when he acts as the representative of a committee and by its directions. He will neither introduce a bill nor make a report, except by delivering it to the clerk or the Speaker, and if his bill should be erroneously referred he can not himself move to correct it unless he does so within three days after its reference.

It is proposed by the majority to make a quorum of the Committee of the Whole House on the state of the Union consist of one hundred members, or considerably less than one-third of all the members of the House. Every bill appropriating money or property or raising revenue must have its first consideration in this committee of one hundred. Since the organization of the Government it has required the same number of members to constitute a quorum in the Committees of the Whole as in the House—that is, a majority of all the members-elect—and that is manifestly the true rule, because the committee is composed of all the members of the House. It is indeed the House itself deliberating as a committee. It resolves itself into a Committee of the Whole simply because while sitting in that capacity there is more freedom of debate and amendment and greater facilities afforded for a careful consideration of the pending measure, and there is no reason why a quorum of the committee should be less than a quorum of the House, except the fact that ordinarily the action of the committee is not final and conclusive upon the matters referred to it. But while the affirma-

[redacted] to do business in the House, an
subject, the same number has always been
a Committee of the Whole, and whenever i
that number present and voting it has bee
proceedings.

In addition to this proposition to reduc
constitute a quorum it is also proposed, by
Rule XXIII, to confer upon the Committee
close all debate on any section or paragrap
eration. Such a power has never been he
mittees but has always been exercised by t
ion it will be unwise to make a change in thi
hundred members are to constitute a quoru
pursuance of this same policy of reducing t
tives necessary to pass laws and transact oth
by the majority to insert the following clause

3. On the demand of any member, or at the suggest
second roll-call is entered upon, the names of members
in the hall of the House who do not vote shall be no
in the Journal and reported to the Speaker with the
and be counted and announced in determining the pr
ness.

This is the most radical and in our opinion
vation proposed by the majority. If agreed
throw the construction that has been uniforn
tion for more than a century, but it will enat
the representatives of the people to pass th
fecting the interests of the whole country. T
rights of the citizens, protected heretofore by
of a majority, may be impaired or destroye
fraction of the members of Congress, for if
constitutionally pass measures in the House
may be done in the Senate. In the same way
may be appropriated from the public Treasur
tional and improper purposes and the interes
pletely subordinated to the selfish demands o
corporations.

Without entering here in

The rules now proposed omit two motions which have for a long time been recognized as privileged, to wit, a motion to fix a day to which the House will adjourn and a motion to take a recess. The first of these motions was made a privileged one in April, 1789, by the first Congress that met under the Constitution, and the second was made privileged by the Thirty-sixth Congress. Not only are these two motions omitted, but a clause is inserted in Rule XVI which enables the Speaker to refuse to entertain any motion whatever which he may choose to consider dilatory. The clause is, "no dilatory motion shall be entertained by the Speaker." It does not define dilatory motions, nor does it give the House the right or the opportunity to decide the question, but it confers the absolute power upon the Speaker to judge finally and conclusively of the motives of every member who submits a motion in the course of legislative proceedings.

By clause 4 of the same rule, when a question is under debate, a motion to adjourn, a motion to lay on the table, a motion for the previous question, a motion to postpone to a day certain, or to refer, or to amend, or to postpone indefinitely, are expressly declared to be in order, and by clause 4 of Rule I the Speaker must decide all questions of order, subject to an appeal to the House. The proposed clause allowing the Speaker to refuse to entertain any motion which he may consider dilatory is absolutely inconsistent with the other provisions of the rule. To provide that members shall have the right to make certain motions, and at the same time to provide that the Speaker may refuse to entertain them, and may also refuse to entertain an appeal from his decision, is simply to place the whole law of the House, so far as parliamentary motions are concerned, in the hands of the presiding officer, and deprive the members of every right in this respect which the rules purport to confer upon them.

A rule abolishing all parliamentary motions heretofore recognized in the House, and simply providing that members may make such motions only as the Speaker may see proper to permit, and take only such appeals from his decisions as he may see proper to allow, would at least have the merit of directness and simplicity. Such a rule would be no more unreasonable or unjust than the one now proposed, and would prevent conflicts upon the floor by advising members in advance precisely what their rights are.

There are other changes proposed in the rules to which we can not agree, but they are of less importance than those to which we have called attention, and we will not extend this statement by alluding to them in detail.

J. G. CARLISLE,
SAML. J. RANDALL,
Minority of the Committee on Rules.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 24.

CLERKS TO MEMBERS AND DELEGATES.

February 6, 1890.—Recommitted to the Committee on Accounts and ordered to be printed.

Mr. Hayes, from the Committee on Accounts, submitted the following

REPORT:

[To accompany bill H. R. 309.]

The Committee on Accounts, to whom was referred the bill (H. R. 309) and the resolution of December 18, 1889, in relation to clerks for Senators and Representatives, having had the same under consideration, approve the general purpose of both and think that such relief should be given to Representatives and Delegates in Congress; and that their business, in justice to their constituents and to themselves, demand that they should have clerks; but it is not deemed expedient by the committee to make provision for clerks for Senators as they have long since done that for themselves and presumably in a way that is satisfactory.

As this belief, so far as the House is concerned, respects ourselves alone and our constituents, we think it best to let the Senate act for itself, or, at least, make its own suggestions; and so we have reported a substitute for the bill which accompanies this report and the passage of which we recommend.

Favorable reports upon bills similar in character to this, and having the same object in view, have been three times at least made to the House; once from the Committee on the Revision of the Laws in the Forty-ninth Congress, which report was adopted and remade by the same committee in the Fiftieth Congress, and which, except so far as it refers to clerks for Senators, equally applies in its arguments and reasons to the bill now recommended, and from which we quote the following:

[House Report No. 3905, Forty-ninth Congress, second session.]

It is believed by your committee that the passage of the bill is necessary to relieve members of Congress from a drudgery which prevents them from devoting a good portion of their time to the study and preparation of such measures as they have to act and vote upon. How often are members of this House called to vote upon the most vitally important measures without ever having had time to read the bill or the report of the committee thereon, much less an opportunity to study and compare such measure with former legislation touching the same subject.

One of the reasons which influenced the committee was the adoption of a resolution by the Senate some years ago, allowing each Senator (not chairman of a committee) a clerk. At each session of Congress since then the Senate has put an amendment on the legislative, executive, and judicial appropriation bill providing for paying those clerks, and the House, after a fruitless resistance, has each time been forced to assent thereto. Senators' clerks now receive the same per diem compensation as clerks to committees. The bill herewith reported proposes to establish uniformity and equality as between Senators and Representatives as to clerks. * * *

It is believed that honest and capable young men can be found in every Congressional district throughout the Union who would gladly accept the position of clerk * * * for $100 per month during the sessions of Congress, which is the compensation proposed by this bill.

poor men of a high order of talent should be di
through the meagerness of the salary, and thus the bi
to the millionaires and men of wealth. Such a cou
high salaries would be inconsistent with the genia
under consideration does not in any sense increase t
its provisions they have nothing to do with the pa
latter receive any pay except for time employed and

Your committee are of opinion that the services of
would be more valuable to that member's constituen
Would not the people of any Congressional district p
there should be paid out of the United States Treasur
is in session, to some bright, active young man, to aid
prompt attention to their business with the severa
answering their letters, etc., thereby securing to the
and study closely the various important matters o
Twenty-five years ago there was no necessity for such
the country in population and business has been very
ments and Bureaus of the Government have, not alwa
ingly multiplied. Then three thousand bills was a la
introduced during a Congress, while now more than
printed and referred to appropriate committees during

The Committee on Accounts in the Fiftiet
favorably and recommended the passage of a si
as in the case of the bill reported from the Co
of the Laws, adopted the report of the Fort
which quotations have been made herein.

We believe that each succeeding Congress
for this relief to members, and makes it more
to be conferred is to the constituency, the peo
to the Representative. Under the provisions
directly to the clerk employed, and in no just
to the member. If any member is so situate
reason, that he or his constituency do not dem
clerk will perform, there is no obligation creat
one.

The vast increase of the volume and importa
country, as represented in and by Congress, is
gard to the interests of the people demand th
have such time as there may be outside of th
House, for the examination of the various me
and the questions, often new, intricate and

Then, again, Department work, in looking after the interests of constituents, with the claims, pensions, land matters, patents, seeds, and various other matters of business and interest, that they are justified in calling upon members for, is constantly increasing with the growth of the country, and each adds to the labor to be done; and last, but not least, the necessary correspondence incident to these various matters of business, and necessary, not only from a business stand-point, but for the mutual interest, benefit, and knowledge of the people and the member, has become of great volume, and the time of every member ought to be too valuable to his constituents to be given to its details and mere manual performance.

We have perfect confidence that the just judgment and sober sense of the intelligent people of this country will heartily approve a measure so much in their own interest; that tends so manifestly to provide for the better equipment of their Representatives for the performance of their own duty and the business of the people; and that in its accomplishment raises the Representatives out of the position of mere errand boys.

We believe that the experience of every member of this House will bear testimony to the need of this measure and even add to the reasons given in its support.

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

Mr. HAYES, from the Committee on Accounts, reported the following bill as a substitute for the bill (H. R. 309) to authorize the appointment and prescribe the compensation of clerks to Representatives and Delegates in Congress:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: SECTION 1. That from and after the approval of this act each Representative and Delegate in Congress shall be entitled to a clerk during the sessions of Congress, to be appointed and paid as follows, to wit: Each Representative and Delegate may appoint such person as he desires to be his clerk and report such appointment to the clerk of the House of Representatives, who thereupon shall record the name of such appointee in a record book to be kept for that purpose, showing the full name of such person, the State or place from whence and by whom appointed, with the date of such appointment, and who shall also record therein removals when made.

SEC. 2. That each of the aforesaid clerks shall be paid as other employés of the House of Representatives, but only for the time so actually employed in service as such clerk and upon the certificate of the Representative or Delegate by whom appointed of such actual employment, at the rate of $100 per month.

SEC. 3. That each of said clerks shall be removable at the pleasure of the Representative or Delegate by whom appointed.

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51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 25.

VENEZUELA STEAM TRANSPORTATION COMPANY.

FEBRUARY 6, 1890.—Recommitted to the Committee on Foreign Affairs and ordered to be printed.

Mr. DUNNELL, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany S. R. 28.]

The Committee on Foreign Affairs, to whom were referred the memorial of the Venezuela Steam-Transportation Company and Senate resolution No. 28, have had the same under consideration and respectfully make the following report:

The Senate resolution No. 28, which passed the Senate January 22, 1890, is as follows:

JOINT RESOLUTION for the relief of the Venezuela Steam Transportation Company.

The following is the resolution as reported by the committee:

"Whereas it appears from the correspondence transmitted to the Senate by the message of the President of the second day of February, eighteen hundred and seventy-two (Executive Document number twenty-eight, second session Forty-second Congress) and on the twelfth of April, eighteen hundred and eighty-eight (Executive Document number one hundred and forty-three, first session Fiftieth Congress), that since the year eighteen hundred and seventy-one indemnity has been repeatedly demanded by the executive department of the United States from the Venezuelan Government, but without avail, for the wrongful seizure, detention, and employment in war and otherwise of the American steam-ships *Hero*, *Nutrias*, and *San Fernando*, the property of the Venezuelan Steam Transportation Company, a corporation existing under the laws of the State of New York, and a citizen of the United States, and the imprisonment of its officers, citizens of the United States, under circumstances that render the Republic of Venezuela justly responsible therefor; and,

"Whereas all the diplomatic efforts of the Government of the United States repeatedly exerted for an amicable adjustment and payment of the just indemnity due to said corporation and its officers, citizens of the United States, upon whose property and persons the aforesaid wrongs were inflicted, have proved entirely unavailing: Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be, and he is hereby, authorized and empowered to take such measures as in his judgment may be necessary to promptly obtain indemnity from the Venezuelan Government for the injuries, losses, and damages suffered by the Venezuelan Steam Transportation Company of New York, and its officers, by reason of the wrongful seizure, detention, and employment, in war or otherwise, of said company's steamers, *Hero*, *San Fernando*, and *Nutrias*, by the Venezuelan belligerents, in the year eighteen hundred and seventy-one, and to secure this end he is authorized to employ such means or exercise such powers as may be necessary."

Your committee have carefully examined the statements contained in the memorial above referred to, and have also examined the report of the Committee on Foreign Affairs (No. 3880) of the second session of the Fiftieth Congress. They find all the allegations made in the memorial fully sustained by executive documents and wholly verified in the report from the Committee on Foreign Affairs in the last Con-

within that time four steam-ships, to
nando, and *Dudley Buck*, were built and registered
ficered by its citizens, dispatched to their destin
amined and licensed in accordance with the terms
Venezuelan Government, duly entered upon the b
had been constructed.

In August, 1871, while the said business was bein
revolutions to which that country is subject broke
known as the "Blues" seized one of the said ves
imprisoned her officers, hauled down the United Sta
as a transport for troops, and also as a man-of-war.
rias, one of the consorts of the *Hero*, was seized by
State of Guiana, her captain (Sturgis) deposed, the
an engagement had in naval combat with the *Hero*.

A few days afterwards the "Blues," who were in
had captured Ciudad Bolivar, by hoisting upon her
the *San Fernando* within range of her guns and by
Fernando. The *Nutrias* had been seized by the gove
come into the possession of certain officers and men
of Venezuela, they escaped with her to Trinidad, wh
testing, there secured the intervention and protect
Cherub.

On September 5, 1871, Capt. J. W. Hancox, the presi
upon terms to which he was forced to submit, from
"Blues," possession of the *Hero* and took her to Trini

On the 13th October, 1871, one Hernandez, chief of t
seized the *San Fernando* and *Nutrias* at the city of Bol
agent of the company. The United States minister,
the Department of State at Washington to demand the
vessels and indemnification from the Government of V
the tenor of his dispatches to the State Department,
well disposed toward the rights and interests of these
ary, 1872, at the instance of this Government, Com
demanded the immediate restitution of the *San Fernan*
February following they were delivered to the compa
have adjusted the question of damages.

Surveys of the several steam-ships and estimates of
fully made, and these appear in the memorials made
the State Department at Washington.

The purpose and scope of the joint resolution now
template the adjustment of the question of damages, a
warranted in entering upon that inquiry.

After the suppression of the revolution the two ves
which were designed for navigating the river Orin
worthless to their owners by the abrogation of the
which assured to this company that right.

The Venezuelan Government having

Under date of November 20, 1883, referring to certain papers received at the State Department from our minister at Caracas touching this matter, Mr. Frelinghuysen says:

"These papers deny that the claim (here in question) is well founded, and assert that even if it were, the national Executive (Venezuelan) could not afford you relief, since all alien claims must be adjudicated by the courts of Venezuela, which can be appealed to.

"Under these circumstances and until there shall be pronounced in the competent courts of the Republic a decision amounting to a denial of justice in your case it is not perceived how this Department can, with propriety, take any further steps in the matter."

Mr. Frelinghuysen afterwards, with frankness as rare as it is commendable, renders it unnecessary to answer the objection above expressed.

On the 3d of April following, in relation to the same subject, he said, among other things:

"I have caused the antecedents of this claim to be carefully re-examined in connection with the suggestions of Mr. Kennedy's brief, and upon a report of the facts and the law submitted to me, have reached the conclusion that the Government should continue to prosecute and press the claim diplomatically, and that no just ground exists for remitting your clients to the high federal court of Venezuela, which Mr. Seijas insists is the tribunal to which they should go; and the more so as the jurisdiction of that court under the law of February, 1873, and the resolution of 1881, referred to by the minister in a case like the present one, is, to say the least, doubtful. * * * * * * * * * *

A little more than sixty days after the present administration came in, to wit, on the 12th day of May, 1885, the Secretary of State, Mr. Bayard, uses the following language in the instructions to our minister at Caracas touching this matter:

"In conclusion, and under the circumstances of this case, I can do no less than instruct you to inform the Government of Venezuela that the Government of the United States regards with great dissatisfaction the continued delay of the former Government in the payment of a debt for which Venezuela is bound by the principles of international law. *This debt is not based on a contract, but on a wrong done in part and in part permitted by the Government of Venezuela to the property of citizens of the United States invested in Venezuela on its invitation. For the wrong so done the Government of Venezuela is clearly and unmistakably responsible, and the Government of the United States must insist upon redress.*"

This matter was persistently pressed upon the attention of the Venezuelan Government and as persistently met with evasion until April of last year, when the subject was transferred to the Congress of the United States by the President in his message to the Senate under date of April 16, 1888.

Your committee report back S. R. No. 28 and recommend its passage.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 26.

NEW YORK INDIAN LANDS IN KANSAS.

FEBRUARY 6, 1890.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

Mr. PERKINS, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 339.]

The Committee on Indian Affairs, having had under consideration House bill 339, submit the following report:

The bill considered by your committee is the same as House bill 1406 of the Fiftieth Congress, which was unanimously reported from the Committee on Indian Affairs at the first session of such Congress, and which, after very careful consideration, passed both Houses of Congress.

The bill, however, failed to become a law, in consequence of the veto of President Cleveland, and its consideration is again brought to the attention of Congress. It is the judgment of your committee that the President, in consequence of his many and important duties, did not have the time to make himself familiar with the treaties and circumstances under which these lands were allotted to thirty-two New York Indians in 1860, and vetoed the bill under a misapprehension of the facts and of the equities of all parties concerned. In the consideration of the bill by your committee it was aided with information from one of the early settlers upon the land and by a very intelligent New York Indian who had been raised near the lands, and who knew many of the original allottees and the circumstances of the allotment, but who now resides in the Indian Territory, and after a careful consideration of the present bill, and of the treaties and circumstances under which the certificates of allotment were issued in 1860, it is the judgment of your committee that the bill should pass without delay.

For a mere detailed statement of the lands, and the circumstances which make this proposed legislation necessary, the report of the committee made in the Fiftieth Congress is made part hereof with accompanying papers and is as follows:

These lands are situated in Bourbon Count
actual settlers, and have been for more than
good state of cultivation with valuable imp
settlers are desirous of having the questions
pute settled, and are anxious to obtain a perfe
in that view are willing to accept the provisi
your committee.

A more detailed history of these lands is g
letter of the honorable Commissioner of Indi
29, 1878.

From the first the settlers have been denyi
the Indians to these lands, and for years ha
legislation from Congress in their behalf.

The bill considered by your committee is a
the Forty-seventh Congress, and the Committe
Congress, to which the bill was referred, m
thereon:

The history of the lands in question is given in a le
sioner of Indian Affairs, bearing date of March 29, 187

Your committee agree with the statement of the hon
Affairs that "it is very desirable that adequate legisl
of these lands and the final settlement of all questions
therefore recommend the passage of the bill advised b
of Indian Affairs, changed only as to the price per a
obliged to pay.

There is no difference of opinion on any point of the
the price per acre, between your committee and the
dian Affairs; your committee holding that

of the allotments *is* good or not under the treaty stipulations, and if decided that the title *is* good, and that the Indians really own the lands in question, under the occupying claimant's law of the State of Kansas, each occupant in possession holding under a color of title from some previous occupant would be entitled to recover from the successful litigant such payment for his improvements as was found by the court just and equitable.

No Indian is in condition to make good this demand of the occupant, and it would not unlikely occur that in the end, after expensive and vexatious litigation, he would fail to secure any considerable compensation for his property.

Your committee are therefore of the opinion that either to send these parties into court by a direct order, or to pass such legislation as would inevitably result in a tedious litigation, is both unwise and unjust to both parties. It has been made clearly apparent that to provide for the sale of the land under the appraisement would only result in a determined opposition by the settlers in the courts.

It has also been made apparent that the price fixed in the bill ($3 per acre) will be acceded to by the settlers and the money promptly paid, under the provisions of the bill, to the Secretary of the Interior, to be held by him in trust, subject to the call of the proper parties to whom it may belong.

Your committee further state that in their judgment the price that should be considered adequate for these lands should not be much greater than that price the lands were worth when abandoned by the Indians nearly twenty years ago; that the act of Congress of 1873 provided for the patenting to the Indians then living upon the lands the selections which they had made under treaty, and that those who were at that time living on the lands received patents for their selections; that the lands now sought to be sold are only those lands that have been voluntarily or otherwise abandoned by the original allottees.

Your committee desire further to state that the Indians, through their attorney, Hon. S. A. Cobb, of Wyandotte County, Kansas, four years since agreed to a uniform price of $2.50 per acre, and that they desired the sale of the lands. The settlers living upon the lands also signified their willingness to purchase at that price, and, therefore, your committee feel that in fixing the price at $3 per acre they have named a reasonable valuation.

They therefore, in a spirit of compromise, offer this bill as in their judgment presenting under all the circumstances the best possible solution of the question, and recommend its passage.

With the recommendation of the committee of the Forty-seventh Congress your committee fully concurs, except that it recommends that the present bill be amended so as to strike out the words "one dollar and twenty-five cents per acre" in lines 15 and 16, and insert in lieu thereof "two dollars and fifty cents per acre."

These recommendations are made by your committee, thinking it better for the Indians, and but little more rigorous for the settlers than the provisions of the original bill. The certificates of allotment to these lands were issued in September, 1860, to the Indians, and yet in all these years they have not been able to get possession of them, make improvements upon them, cultivate them, or make disposition of them; and, in the judgment of your committee, if they are ever to realize anything from them, it must be by act of Congress authorizing their sale to the settlers occupying them, and somewhat in the spirit of compromise. There were 1,824,000 acres of land in Kansas given to the New York Indians by the treaty of 1838. In April, 1858, the then honorable Secretary of the Interior held that those of the New York Indians who had not removed to the lands had thereby forfeited their title thereto, and that the same should be opened to settlement, and in December, 1860, executive proclamation was made opening the lands to the settlers of the country. But after the decision of the Secretary of the Interior, of April, 1858, and prior to the executive proclamation of December, 1860, the thirty-two Indians spoken of in the accompanying reports satisfied the Secretary of the Interior that they had complied with the provisions of the treaty of 1838, and on the 14th day of September, 1860, certificates of allotments were issued to them for 320 acres each. Some of the lands so allotted are the lands embraced within the provisions of the present bill. All else was sold by the Government to

been in possession, denying the validity of the
for a title to their homes.

Under these circumstances, and particularly
claimant's law of Kansas, mentioned by the
the last Congress, your committee has deeme
nently fair to the Indians, to recommend th
bill, amended in the particulars suggested.

DEPARTMENT
OFFIC

SIR: I am in receipt, by reference from the House C
bill H. R. 1178, providing for the sale of certain New
and requesting the views of this office on the same.

I am also in receipt, by your reference for report, of
Haskell, dated January 18, 1878, inclosing a copy of the
views of this office thereon.

In connection therewith I have the honor to report t
the treaty of January 15, 1838, with the New York Indi
States agreed to set aside for the New York Indians, the
New York, a certain tract of land, west of Missouri, con
said Indians, to be held in fee-simple, by patent from t
with the provisions of the third article of the act of M
proviso to which declares that "such lands shall revert
Indians become extinct or abandon the same." The tre
full power and authority to divide said lands, in severalt
and bands, and to sell and convey the same among each o
as they might adopt. Indians not accepting and agre
years, or such other time as the President may from time
all interest" in "the lands so set apart to the United Sta

Under these provisions 32 New York Indians removed
tory now embraced in the State of Kansas prior to June
honorable Secretary of the Interior approved to them sel
which, on the 14th of September, 1860, certificates of all
said reservees, the certificates specifying that the selectio
and benefit of the reservees, and were not subjected to
or otherwise disposed of, except to the United States."

By an act approved February 19, 1873 (17 Stat., 466), Co
settlers as were then residing thereon to enter and purch
exceeding 160 acres, at an appraised value of not less th
tained, under the direction of the Secretary of the Int
pointed to value the same, the funds arising

The commissioners appointed under the act of 1873 to appraise the lands reported on the 26th of July, 1873, that none of the 32 New York Indians were living on the lands at that time or at the date of the act, but that all of said lands were then occupied by actual settlers, whose names were given in the report opposite the description of the tract on which they had respectively made settlement. The lands were valued by the appraisers at an average of $4.9076 per acre, and their report was approved by the Department September 30, 1873.

Instructions were issued by the Secretary, under the same date, directing that the lands should be sold under the instructions of the General Land Office by the district land officers, who were directed to notify the settlers entitled to purchase by published advertisement of a general character in a newspaper published in the vicinity of the land that payment would be required within two years.

In pursuance of these instructions, as it appears from a letter of the honorable Commissioner of the General Land Office, dated July 3, 1877, the following sales have been made:

First. From N. ½ section 26, 23 S., 25 E., allotted to Joseph Johndroe, there has been sold, at $5 per acre, cash, to Benjamin Brown, the NE. ¼ of said section; consideration, $800.

Second. From N. ½ section 27, 23 S., 25 E., allotted to Margaret Johndroe, there has been sold, at $5 per acre, cash, to Nathaniel Oates, the S. ½ NE. ¼; consideration, $400.

Third. From the S. ½ of said section 27, allotted to Michael Gray, there has been sold, at $4.50 per acre, cash, to Nathaniel Oates, the N. ½ of SE. ¼; consideration, $360.

Fourth. From W. ½ section 4, 24 S., 25 E., allotted to James Scrimpsher, there has been sold, at $4.75 per acre, cash, to S. McEwing, the N. ½ of SW. ¼; consideration, $380.

Fifth. From N. ½ section 27, 23 S., 25 E., allotted to Margaret Johndroe, there has been sold, at $5 per acre, cash, to William M. Beckford, the N. ½ NE. ¼, and at $4.50 per acre, to the same party, the N. ½ SW. ¼ of said section; consideration, $760.

Sixth. From the same allotment there has been sold, at $4.50 per acre, and paid in full, in two installments, with $10.77 interest, to John Barrett, the S. ½ NW. ¼; consideration, including interest, $370.77.

Seventh. From the W. fractional ½, sec. 2, 24 S., 25 E., allotted to Joseph Fox, there has been sold, at $5 per acre, and paid in full, in two installments, with $23.80 interest, to Joanna Glendenning, the NW. fractional ¼, containing 156.76 acres; consideration, with interest, $822.60.

Eighth. And from the E. fractional ½ sec. 6, 24 S., 25 E., allotted to Mary Predome, there has been sold, at $6 per acre, to Levi T. Call, the W. ½ of SE. ¼ of said section, amounting to $480, one half of which was paid at date of purchase, September 29, 1875, and the balance, with interest, is still due and unpaid.

There has, therefore, out of an aggregate of 10,215.63 acres, valued at $50,850.05, been sold 879.76 acres for the sum of $3,858.80; leaving unsold 9,335.87 acres, valued at $46,991.25, or an average of $5.02½ per acre, which aggregate amount would, according to the terms of the act of February 19, 1873, if not claimed by the allottees, or their heirs, inure to the United States at the end of five years, which have expired.

The bill under consideration proposes to reduce the aggregate value of the unsold lands over one-half, or to $23,339.68, and if the lands are not sold, at the diminished rate of $2.50 per acre, within one year, that patents shall issue in the names of the original allottees for the balance unsold.

With these provisions of the bill I am not inclined to concur, for the following reasons:

Under the treaty of 1838 the New York Indians were entitled to 1,824,000 acres of land in Kansas, and a removal fund of $400,000, which the United States never provided. Notwithstanding the failure of the United States in this regard, portions of the Indians removed to Kansas subsequent to the treaty, with a view of making that country their permanent home, but on account of their rapid depletion in number from sickness, a majority afterwards returned to New York.

By decision of April 19, 1858, the honorable Secretary of the Interior held that those of the New York Indians who had not removed had thereby forfeited their title to the reserve, and that the same should be opened to settlement; but in the execution of said decision, and prior to the proclamation of December, 1860, opening the lands to settlement, the allotments under consideration were made to the 32 Indians who were then in Kansas, and certificates were issued to them therefor.

It follows, therefore, that an equitable interest in fee in the lands vested in these Indians, by virtue of the grant contained in the treaty, at the date of their removal and long prior to the settlement of Kansas, although the evidence of title did not issue until 1860.

They accordingly assumed the condition of legal ownership, by *purchase*, over the lands subsequently allotted to them, at an early day, and are entitled to the benefits of any appreciation of value arising from the settlement and improvement of the country.

This doctrine is, I am aware, in opposition to a somewhat prevalent opinion as to the right of the Indians. It has been urged in similar cases that as the Indians have not improved their lands they are not entitled to the advance in value incident to the settlement of the country. The purchase of wild lands, and holding of the same to await the improvement of the country, has been one of the most popular and safe, as well as the most remunerative, methods of investment known, and I can see no grounds upon which Indians taking an equitable title in fee should be deprived of the benefits never denied to white purchasers of public lands bought and held for speculative purposes only.

Informal claims have been filed in this office by the original allottees, or their heirs, covering nearly all the proceeds arising from the sale of these lands when sold.

There is no evidence on file in this office, aside from the letters of Mr. Haskell, showing that it is the desire of these Indians that the lands should be sold at a reduced price.

The lands are in Bourbon County, one of the richest and most fertile countries in the State. They are within a few miles of Fort Scott, and near the line of the Missouri, Kansas and Texas Railroad—the Missouri River, Fort Scott and Gulf Railroad running nearly through the center of the body of the lands, which lie in close proximity to the corner of townships 23 and 24, in ranges 24 and 25 east. The records of the General Land Office show that there is scarcely a vacant forty-acre tract of land in or near the townships named. With these facts in view, it is safe to assume that the several tracts were, in 1873, worth the full amount at which they were appraised, and that in view of the rapid development of the country, and the present price of uncultivated lands in that vicinity, there has, at least, been no depreciation in their value.

The settlers have been in possession of these lands for years, to the exclusion of the Indians, and have had every advantage and opportunity to pay for the lands from the products of the same.

The title of the Indians is, under treaty stipulations, similar to those with the Shawnee, Miami, and other Indians in Kansas, whose lands have been held by the Supreme Court of the United States (5 Wall., 737) to be excluded from the jurisdiction of the State, and *not subject to taxation*, and it is fairly presumable that the settlers have availed themselves of the benefit arising under this decision.

For these and other reasons which might be urged, I can not recommend the passage of the bill in its present form. It is, however, very desirable that adequate legislation be had insuring the sale of these lands and the final settlement of all questions in connection therewith.

I have, therefore, to recommend that the bill be amended as follows: Strike out all after the word "office," in the twelfth line, and insert, in lieu thereof, the following:

"At any time within one year from the passage of this act said lands so occupied by them in tracts not exceeding one hundred and sixty acres, according to the Government surveys, at not less than the appraised value of the said tracts, as heretofore ascertained by the Secretary of the Interior, in accordance with the provisions of the act of February nineteenth, one thousand eight hundred and seventy-three, entitled 'An act to provide for the sale of certain New York Indian lands in Kansas,' payment to be made in three annual installments, one-third at date of entry, one-third at the end of one year from date of entry, and the balance in two years from date of entry, with interest on said amounts, respectively, from date of entry, at six per centum per annum; and the moneys arising from such sales shall be paid into the Treasury of the United States in trust for and to be paid to said Indians, respectively, to whom said certificates were issued, or to their heirs, upon satisfactory proof of their identity to the Secretary of the Interior, at any time within three years from the passage of this act; and in case such proof is not made within the time specified, then the proceeds of such sale, or so much thereof as shall not have been paid under the provisions of this act, shall become a part of the public moneys of the United States.

"SEC. 2. That any lands not entered by such settlers at the expiration of one year from the passage of this act shall be offered at public sale, in the usual manner, at not less than the appraised value, notice of said sale to be given by public advertisement of not less than thirty days; and any tract or tracts not then sold, together with such tracts as have heretofore been or may hereafter be entered, and wherein default has been made in the payment of any portion of the purchase money, or the interest thereon, as herein or heretofore provided, shall be thereafter subject to private entry at the appraised value of said tracts."

I inclose herewith a schedule showing the names of the 32 allottees named in this report, the description of the lands allotted to each, with the names of the settlers claiming the lands placed opposite the tract claimed by them.

The bill referred by the House committee, together with the letter of Mr. Haskell, with inclosure, is herewith respectfully returned.

I have the honor to be, very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The HON. SECRETARY OF THE INTERIOR.

Description and valuation of New York Indian lands as appraised in the year 1873.

Description.	Section.	Township.	Range.	Number of acres.	Value per acre.	Total value.	Name of reservee.	Name of settler.
				Acres.				
NW. ¼	36	23	24	160.00	$6.50	$1,040.00	Mary Ann Gray	Lyman Schaffer.
SW. ¼	36	23	24	160.00	6.00	960.00	do	Edward Schaffer.
SE. ¼	27	23	25	160.00	4.50	720.00	Michael Gray	Mary D. Nickerson, S. ½; Nathaniel Oates, N. ½.
SW. ¼	27	23	25	160.00	4.50	720.00	do	William Morehead, W. ½ and SE. ¼; R. Simmons, NE. ¼.
NE. ¼	27	23	25	160.00	5.00	800.00	Margaret Johnson, sr	William M. Beckford, N. ½; Nathaniel Oates, S. ½.
NW. ¼	27	23	25	160.00	4.50	720.00	do	William M. Beckford, N. ½; John Barrett, S. ½.
NE. ¼	26	23	25	160.00	5.00	800.00	Joseph Johnson	Benjamin Bowman.
NW. ¼	26	23	25	160.00	4.00	640.00	do	James Barrett, N. ½; Mary Hodges, S. ½.
SE. ¼	26	23	25	160.00	4.00	640.00	Agnes Johndroe	George McNeal.
SW. ¼	26	23	25	160.00	3.75	600.00	do	Nathaniel Lowrie.
NW. ¼	35	23	25	160.00	3.75	600.00	Bridget Johndroe	W. A. Dillon, N. ½; Henry Brown, S. ½.
SW. ¼	35	23	25	160.00	3.75	600.00	do	John Clendening.
NE. ¼	35	25	25	160.00	3.75	600.00	John Johndroe	James Clendening.
SE. ¼	35	23	25	160.00	3.75	600.00	do	Paul Parks, N. ½ and SW. ¼; John Marley, SE. ¼.
NE. ¼	34	23	25	160.00	3.75	600.00	Mary Ann Johndroe	James E. Simpson.
SE. ¼	34	23	25	160.00	3.75	600.00	do	Benjamin H. McAdams.
NW. ¼	34	23	25	160.00	3.75	600.00	Cecelia Johndroe	Gilbert Carlisle.
SW. ¼	34	23	25	160.00	3.75	600.00	do	Thomas Foster.
NE. ¼	33	23	25	160.00	3.75	600.00	Margaret Johndroe, jr	—— McCanna.
SE. ¼	33	23	25	160.00	4.00	640.00	do	George H. Clark, E. ½; J. A. Clark, W. ½.
NW. ¼	33	23	25	160.00	3.75	600.00	Susan Johndroe	Isaiah Lonsbury.
SW. ¼	33	23	25	160.00	3.75	920.00	do	Francis M. Allen.
NE. ¼	32	23	25	160.00	3.75	600.00	Cecelia Erroe	Michael Walks.
SE. ¼	32	23	25	160.00	5.00	800.00	do	Robert Montgomery.
NW. ¼	32	23	25	160.00	3.75	600.00	James Erroe	Simeon Burkholder, F. ½; Patrick Quigley, NW. ¼; Harnett Hayyard, SW. ¼.
SW. ¼	32	23	25	160.00	4.25	680.00	do	George B. Scott.
NE. ¼	31	23	25	160.00	4.25	680.00	Lewis Erroe	Abram Burkholder.
SE. ¼	31	23	25	160.00	5.00	800.00	do	Charles Betch, S. ½; J. M. Scott, N. ½.
NW. fractional ¼	31	23	25	159.46	3.75	597.97½	Henry Logatrine	Samuel Bellew.
SW. fractional ¼	31	23	25	159.82	4.75	759.14½	do	E. L. Faylor.
NE. ¼	36	23	24	160.00	10.00	1,600.00	Mary Logatrine	Oramur Chapman.
SE. ¼	36	23	24	160.00	7.00	1,120.00	do	Jacob L. Coukhilt.
NE. fractional ¼	1	24	24	159.00	7.00	1,113.00	Flizabeth Bratman	John Murphy.
SE. ¼	1	24	24	160.00	6.00	960.00	do	Benjamin Sheets.
NW. fractional ¼	1	24	24	157.00	7.00	1,099.00	Lewis Petelle	James Guilfoyle.
SW. ¼	1	24	24	160.00	6.50	1,040.00	do	Lydia A. Hayes.
NE. fractional ¼	2	24	24	155.38	7.50	1,165.00	Napoleon B. Petelle	Robert Hayes.
SE. ¼	2	24	24	160.00	6.00	960.00	do	James Herverley.

NW. fractional ¼	2	24	24	154.14	6.00	924.84	Catharine Petelle	William Lowe.
SW. ¼	2	24	24	160.00	3.75	600.00	do	John Darling.
NW. ¼	6	24	25	160.64	5.00	803.20	Martin Predom	S. M. Johnson.
SW. ¼	6	24	25	162.63	6.00	975.78	do	James Ellard.
NE. fractional ¼	6	24	25	159.28	5.00	796.40	Mary Predom	William Lowrie.
SE. ¼	6	24	25	160.00	6.00	960.00	do	Jacob Fabee, S. ½; Levi T. Call, N. ½.
NW. fractional ¼	5	24	55	159.25	5.00	796.00	Rosalie Predom	John Ruble, N. ½; and SE. ¼; William Beth, SW. ¼.
SW. ¼	5	24	25	160.00	5.00	800.00	do	Richard Carter.
NE. fractional ¼	5	24	25	159.67	6.00	958.02	Daniel Jack	Henry Ruble.
SE. ¼	5	24	25	160.00	6.50	1,040.00	do	Thomas Clark.
NW. ¼	4	24	25	160.72	6.00	964.32	James Scrimpsher	John McNeal.
SW. ¼	4	24	25	160.00	4.75	760.00	do	S. B. Delano, S. ½; S. McEwing, N. ½.
NE. ¼	4	24	25	162.40	5.00	812.00	Louisa Shrimpsher	George A. Wagoner, S. ½; A. B. Wagoner, N. ½.
SE. ¼	4	24	25	160.00	5.50	880.00	do	David Mack.
NW. ¼	3	24	25	162.64	4.75	772.54	James King	John A. Tiffany.
SW. ¼	3	24	25	160.00	4.75	760.00	do	Levi Gunnsaulers, S. ½; E. H. Hooker, N. ½.
NE. ¼	3	24	25	161.44	4.50	726.48	Mary King	David Washburne.
SE. ¼	3	24	25	160.00	4.50	720.00	do	Anderson Carter.
NW. fractional ¼	2	24	25	159.76	5.00	798.80	Joseph Fox	Joanna Clandening.
SW. ¼	2	24	25	160.00	4.50	720.00	do	Benjamin Flahart.
NE. fractional ¼	2	24	25	157.60	3.75	590.90	Mary Yellowjacket	William Denton, NW. ¼; Jessie Allen, E. ½ and SW. ¼.
SE. ¼	2	24	25	160.00	4.50	720.00	do	Adam Kyle.
NE. fractional ¼	3	24	24	152.66	5.50	839.63	Susc Yellowjacket	Austin Warner.
NW. fractional ¼	3	24	24	152.14	5.50	836.77	do	John Keating.
SE. ¼	3	24	24	160.00	5.50	880.00	Ann Yellowjacket	Charles Hagan.
SW. ¼	3	24	24	160.00	4.00	640.00	do	George W. Bolster.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 27.

TRADE-MARKS AND COPYRIGHTS.

February 6, 1890.—Recommitted to the Committee on Patents and ordered to be printed.

Mr. Simonds, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 3812.]

The Committee on Patents, to whom was referred House bill 3812, submit the following report:

As sections 1 and 2 of the bill relate to patents, and the remaining sections (3, 4, and 5) relate to trade-marks and labels, the committee recommends that said sections 1 and 2 be erased (for report in a separate bill) and that said sections 3, 4, and 5, be, respectively, numbered 1, 2, and 3, by which numbers they will be referred to in this report.

The purpose of sections 1 and 2 of the bill is to amend the existing trade-mark in a single particular. That act as it now exists permits the registration of trade-marks used in commerce with foreign nations or with the Indian tribes. The purpose of sections 1 and 2 of the bill is to permit the registration of trade-marks used in commerce among the several States. The following is the existing trade-mark act, with the proposed amendments printed in italics:

Chap. 138.—AN ACT to authorize the registration of trade-marks and protect the same.

Be it enacted, etc. [Section 1], That owners of trade-marks used in commerce with foreign nations *or among the several States* or with the Indian tribes, provided such owners shall be domiciled in the United States or located in any foreign country, or tribes, which, by treaty, convention, or law, affords similar privileges to citizens of the United States, may obtain registration of such trade-marks by complying with the following requirements:

First. By causing to be recorded in the Patent Office a statement specifying name, domicile, location, and citizenship of the party applying; the class of merchandise, and the particular description of goods comprised in such class to which the particular trade-mark has been appropriated; a description of the trade-mark itself, with fac-similes thereof, and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade-mark has been used.

Second. By paying into the Treasury of the United States the sum of twenty-five dollars, and complying with such regulations as may be prescribed by the Commissioner of Patents.

Sec. 2. That the application prescribed in the foregoing section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by a member of a firm, or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade-mark sought to be registered, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that such trade-mark is used in commerce with foreign nations, *or among the several States* or Indian tribes, as above indicated; and that the description and fac-similes presented for registry truly represent the trade-mark sought to be registered.

Sec. 3. That the time of the receipt of any such application shall be noted and recorded. But no alleged trade-mark shall be registered unless the same appear to be

lawfully used as such by the applicant in foreign commerce *or in commerce among the several States* or commerce with Indian tribes, as above mentioned, or is within the provision of a treaty, convention, or declaration with a foreign power; nor which is merely the name of the applicant; nor which is identical with a registered or known trade-mark owned by another, and appropriate to the same class of merchandise, or which so nearly resembles some other person's lawful trade-mark as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers. In an application for registration the Commissioner of Patents shall decide the presumptive lawfulness of claim to the alleged trade-mark; and in any dispute between an applicant and a previous registrant, or between applicants, he shall follow, so far as the same may be applicable, the practice of courts of equity of the United States in analogous cases.

SEC. 4. That certificates of registry of trade-marks shall be issued in the name of the United States of America, under the seal of the Department of the Interior, and shall be signed by the Commissioner of Patents, and a record thereof, together with printed copies of the specifications, shall be kept in books for that purpose. Copies of trade-marks and of statements and declarations filed therewith and certificates of registry so signed and sealed shall be evidence in any suit in which such trade-marks shall be brought in controversy.

SEC. 5. That a certificate of registry shall remain in force for thirty years from its date, except in cases where the trade-mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this act at the time that such trade-mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years such registration may be renewed on the same terms and for a like period.

SEC. 6. That applicants for registration under this act shall be credited for any fee or part of a fee heretofore paid into the Treasury of the United States with intent to procure protection for the same trade-mark.

SEC. 7. That registration of a trade mark shall be prima facie evidence of ownership. Any person who shall reproduce, counterfeit, copy, or colorably imitate any trade-mark registered under this act and affix the same to merchandise of substantially the same descriptive properties as those described in the registration shall be liable to an action on the case for damages for the wrongful use of said trade-mark at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of such trade-mark used in foreign commerce *or in commerce among the several States* or commerce with Indian tribes, as aforesaid, and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful act; and courts of the United States shall have original and appellate jurisdiction in such cases without regard to the amount in controversy.

SEC. 8. That no action or suit shall be maintained under the provisions of this act in any case when the trade-mark is used in any unlawful business or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or under any certificate of registry fraudulently obtained.

SEC. 9. That any person who shall procure the registry of a trade-mark, or of himself as the owner of a trade-mark, or an entry respecting a trade-mark, in the office of the Commissioner of Patents, by a false or fraudulent representation or declaration, orally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the injured party, to be recovered in an action on the case.

SEC. 10. That nothing in this act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this act had not been passed.

SEC. 11. That nothing in this act shall be construed as unfavorably affecting a claim to a trade-mark after the term of registration shall have expired; nor to give cognizance to any court of the United States in an action or suit between citizens of the same State, unless the trade-mark in controversy is used on goods intended to be transported to a foreign country *or used in commerce among the several States*, or in lawful commercial intercourse with an Indian tribe.

SEC. 12. That the Commissioner of Patents is authorized to make rules and regulations and prescribe forms for the transfer of the right to use trade-marks and for recording such transfers in his office.

SEC. 13. That citizens and residents of this country wishing the protection of trade-marks in any foreign country the laws of which require registration here as a condition precedent to getting such protection there may register their trade-marks for that purpose as is above allowed to foreigners, and have certificate thereof from the Patent Office.

Approved, March 3, 1881.

CHAP. 393.—AN ACT relating to the registration of trade-marks.

Be it enacted, etc., That nothing contained in the law entitled "An act to authorize the registration of trade-marks and protect the same," approved March third, eighteen hundred and eighty-one, shall prevent the registry of any lawful trade-mark rightfully used by the applicant in foreign commerce *or in commerce among the several States* or commerce with Indian tribes at the time of the passage of said act.

Approved, August 5, 1882.

The following is a brief history of the trade-mark act. By an act approved July 8, 1870, all trade-marks were declared entitled to registration. This act of 1870 came before the United States Supreme Court at the October term of 1879 (Trade-Mark Cases, 100 U. S., 82), and that court said (at p. 96):

When, therefore, Congress undertakes to enact a law which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the law, or from its essential nature, that it is a regulation of commerce with foreign nations, or among the several States, or with the Indian tribes. If not so limited, it is in excess of the power of Congress.

And because the act was not so limited the Supreme Court decided the act of 1870 to be unconstitutional and void.

In view of this decision the existing act, approved March 3, 1881, was passed.

The so-called "commerce clause" of the Constitution is: "Congress shall have power * * * to regulate commerce with foreign nations, or among the several States, or with the Indian tribes," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

The practical direction of the Supreme Court was that the act be made to apply to trade-marks used in "commerce with foreign nations, or among the several States, or with the Indian tribes." As a matter of fact the act is limited to "trade-marks used in commerce with foreign nations or with the Indian tribes," omitting all mention of trade-marks used in "commerce among the several States." That which is omitted is as clearly entitled to inclusion as that which is actually included. And that which is omitted is of far greater practical importance than that which is included.

It would be difficult to overestimate the importance of trade-marks in the commerce of the world. Their importance in the commerce of the world is so great that all or nearly all of the distinctively commercial nations of the world have by treaty with each other provided for their registration and protection. The United States has such treaties with Austria-Hungary, Belgium, Brazil, France, German Empire, Great Britain, Italy, Russia, Serbia, Spain, Switzerland, the Netherlands.

The trade-marks used in commerce among the several States are of even greater importance to the people of the United States than are the trade-marks used in commerce with foreign nations. There is hardly a single State in the Union which does not produce commodities of national consumption and national reputation; the preservation of their purity against counterfeiting and adulteration is of the greatest importance to the people at large, and of great importance to the producers of such commodities. The purpose of sections 1 and 2 of the bill is to accord to these trade-marks, used in commerce among the several States, the same protection which the law now accords to those used in commerce with foreign nations or in commerce with the Indian tribes.

The purpose of section 3 of the bill is practically the same as that of sections 1 and 2. It applies to labels and similar prints. There are a

great many labels and prints used upon commodities of a great many kinds which are not technically trade-marks, but which are distinctive in their character and which, like trade-marks, preserve the purity of such commodities against counterfeiting and adulteration. The purpose of section 3 is to permit such labels and prints to be registered and thereby acquire the same degree of protection which the law accords to copyright. This section is only an amplification of existing copyright law, which is contained in section 3 of the act of June 18, 1874, which is as follows:

SEC. 3. That in the construction of this act the words "engraving," "cut," and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the entry or registry of such prints or labels in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid, for recording the title of any print or label not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same.

The proposition of section 3 of the bill is to strike out all after the word "arts," in the act just quoted, and let said section 3 become law in lieu thereof.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 28.

SALE AND REMOVAL OF FORT BLISS, TEX.

FEBRUARY 6, 1890.—Recommitted to the Committee on Military Affairs and ordered to be printed.

Mr. LANHAM, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3923.]

The Committee on Military Affairs, having considered House bill No. 3923, entitled "A bill to provide for the sale of the site of Fort Bliss, Tex., the sale or removal of the improvements thereof, and for a new site and the construction of suitable buildings thereon," respectfully report the same to the House with certain amendments hereinafter stated, and recommend that when so amended the bill do pass.

Strike out the words "and shall purchase" in lines 1 and 2 of section 2, and insert in lieu thereof the words "to select and acquire title to." Also strike out the words "three hundred and twenty nor more than six hundred and forty" in lines 2 and 3, section 2, and insert in their stead the words "one thousand." Strike out the words "not to exceed in cost twenty dollars per acre" in line 4, and "twelve company" in lines 7 and 8 of the same section. In line 14, section 2, strike out the word "purchased" and insert the word "acquired." At the end of section 2 add the following words, "And that said title shall be obtained without expense to the Government."

Strike out the word "purchase" in line 2, section 3, and insert the word "acquirement."

These amendments are recommended at the suggestion of the Secretary of War and Maj. Gen. J. M. Schofield, and in view of the fact that the necessary amount of land for the new post, it is learned, can be obtained by donation, and without expense to the Government.

The Secretary of War, to whom the bill was referred for suggestion, says among other things:

With reference to the provision in line 3 of section 2 which limits the amount of ground to be purchased for the new post to not more than 640 acres, I would suggest that the limitation be either stricken out, so as to leave the amount discretionary with the Secretary of War, or that the limit be increased to 1,000 acres. It is generally the case that more land than 640 acres is wanted for a regimental post and rifle-range, and it can usually be obtained to better advantage at first than after the post is established.

General Schofield says:

I am decidedly in favor of the purchase of a new site, properly located, near El Paso, Tex., for a military post, in lieu of the present post of Fort Bliss, and the sale of the present grounds and buildings as soon as the new post is ready for occupation by the present garrison. The size of the new post should not be fixed by law at this time, but left to be determined by the future interests of the military service. Yet the ground to be purchased should be large enough for a full regiment, including the necessary rifle-range, etc., say 1,000 acres, so that the garrison may be enlarged when

necessary. I would simply suggest that your bill be amended by striking out the words "twelve company," so that the size of the new post may be fixed for the present by the amount of the appropriation for its construction. Since the land can be obtained at a nominal cost, as stated by the citizens of El Paso, the amount named in the bill will accomplish what is important at this time.

It is considered material to submit the following facts in connection with this bill:

The present site of Fort Bliss, the military post at El Paso, is undesirable almost to the point of being untenable. For years the post commanders have successively reported it as objectionable and urged that, in view of the necessity of a change of location, no extra expenditure be incurred in fitting up the present site. The result is that Fort Bliss lacks many of the improvements that other military sites have received. The Fort Bliss military reservation consists of 132 acres, of which only about 30 acres is even approximately level and scarcely any of it entirely level. The remaining 100 acres is so broken by hills and ravines as to be entirely unfit for military use. It is impossible to extend the reservation in any direction so as to secure additional level ground. Moreover, small as is the parade ground, it is bisected by the Atchison, Topeka and Santa Fé Railway, to the great inconvenience and even danger of officers and troops. Parallel with the Atchison, Topeka and Santa Fé Railway and a few rods to the east of the parade ground runs the Southern Pacific Railway. The reservation comprises the narrow strip of ground through which a railroad from the north or west must necessarily pass, as these two railroads do. Indeed, Fort Bliss as at present located has been aptly described by an army officer as lying directly "in the highway of the continent." The ground is sorely needed by the railroads, and the occupation of the ground as a military reservation places a barrier in the path of commerce. If the post were moved the ground and buildings could be sold by the Government for a good price. Again, the present site is within the city limits and only a mile from the business center of the city, and hence bad for the *morale* of the troops. For a fuller statement of the objectionable features of the present site, reference may be had to the annual reports of post commanders at Fort Bliss, especially the reports for 1889 and 1888.

It is believed that El Paso is the most important military point on the Mexican frontier and is the most central and commanding point from which to reach all parts of western Texas and of southern New Mexico and Arizona; and therefore that the military post at El Paso should be enlarged and strengthened to such a degree as will make the advantages of this location available in any military emergency that may arise.

El Paso is situated in the extreme western corner of Texas, 4 miles from the southernmost point of New Mexico. El Paso is directly on the boundary line between the United States and Mexico and about midway between the Gulf of Mexico and the Pacific Ocean; the distance in a direct line from El Paso to the mouth of the Rio Grande being about 700 miles, and from El Paso to the Pacific Ocean about 600 miles. Besides El Paso there are but two other important railroad points on the Mexican frontier, namely, Laredo and Eagle Pass, Laredo being but 200 miles from the mouth of the Rio Grande and Eagle Pass but 300 miles.

El Paso is about 1,200 miles distant from St. Louis, Kansas City, New Orleans, San Francisco, and City of Mexico. El Paso derives its name from the fact that the mountains which traverse New and Old Mexico north and south here close in upon the Rio Grande, leaving but a narrow pass that forms a natural causeway between lofty mountain ranges.

This pass is now traversed by two railroads, the Atchison, Topeka and Santa Fé and the Southern Pacific, which are the great routes to the North and West, respectively. El Paso is often called the "Gateway to Mexico," on account of the commanding position which it occupies in the central part of the northern boundary of Mexico and as the northern terminus of the Mexican Central Railway which traverses the great central plateau of Mexico for a distance of 1,200 miles, and is the principal railroad artery of Mexico.

Immediately across the Rio Grande from El Paso is the important Mexican City of Juarez (formerly called Paso del Norte), a city already of about the size of El Paso and rapidly growing under the fostering care of the Mexican Government. A strong garrison is maintained in Juarez by the Mexican Government, which clearly recognizes the importance of this point and has adopted a policy calculated to build up and strengthen this rival of El Paso. During the year 1889 a custom house costing $155,000 was completed in Juarez, and the Mexican Government is constructing costly revetments to protect the city from inroads by the Rio Grande. No other point along the whole northern boundary of Mexico is receiving so much attention from the Mexican Government as this.

The great importance of El Paso as a strategical point is readily discerned by examining a map of the southwestern part of the United States and the northern part of Mexico. Besides commanding the narrow pass above mentioned El Paso is, by reason of its central location and its unrivaled railroad facilities, the natural headquarters for the entire military field of western Texas and southern New Mexico and Arizona, as well as the point from which any part of the entire central plateau of Mexico can be most easily and quickly reached, even as far as the City of Mexico, while a projected railroad from Juarez westward across the Sierra Madre will afford direct communication with the vast extent of country lying west of those mountains and extending to the Gulf of California.

Five trunk lines of railroad, each about 1,200 miles long, radiate from El Paso, namely, the Texas and Pacific and Galveston, Harrisburgh and San Antonio eastward, the Atchison, Topeka and Santa Fé northward, the Southern Pacific westward, and the Mexican Central southward. Several other lines are projected, and one of them, the Kansas City, El Paso and Mexican, partially completed. The last mentioned road will connect El Paso with a rich coal and lumber district 150 miles north.

El Paso being the terminal of all these railroads, locomotives and cars would always be in readiness here to transport any number of troops to any locality where an Indian outbreak or other trouble demanded their presence.

Nine years ago, when the first railroad reached this place, El Paso was a village of less than 800 population, as shown by the census of 1880. In the spring of 1889 the population was found by actual count to be 11,120. The growth of El Paso has been steady and substantial both in population and in wealth. The assessed valuation of city property is now over $6,000,000, and the assessed valuation for El Paso county about $11,000,000.

As a mining center, El Paso already takes high rank. Two large smelting works have been in operation here for two years. One of them employs 375 men the year around, disburses $700,000 annually, and produced $2,500,000 worth of bullion during the year 1889. The extent and importance of the silver ore interest will appear from the

following statistics of the importation of silver ore from Mexico into this customs district:

Years.	Tons.	Value.	Average tons per day.	Average value per ton.
1884	1,815	$260,608	5	$145.00
1885	8,403	782,275	23	94.00
1886	22,045	1,845,774	60	84.00
1887	44,773	2,889,093	123	65.00
1888	68,212	3,842,358	187	56.50
1889	60,256	3,518,894	167	74.00

The decrease for 1889 over 1888 was due to Secretary Windom's instructions to collectors of customs in relation to the importation of silver ore. The importation fell off from 4,694 tons in September to 453 tons in October, but recovered to a great extent before the end of the year, as the instructions came to be better understood.

This is the largest customs district in the United States. It extends from Presidio del Norte, Tex., to Yuma, on the line between Arizona and California, a distance of 960 miles. The working force of the district has been largely increased during the last three years. The following table shows the increase in customs duties collected in this district:

For fiscal year ending June 30, 1887	$54,846.45
For fiscal year ending June 30, 1888	60,934.24
For fiscal year ending June 30, 1889	77,313.54

The total value of imports into this customs district for the last two years has reached about $5,000,000 per annum.

Of the sixty-four principal customs districts and ports in the United States, as shown by the last report of the Chief of the Bureau of Statistics, in value of importations it ranks tenth in importance in the whole country.

The exports to Mexico through El Paso amounted in the year 1889 to over $4,250,000 in value, according to statistics published by the Mexican Government.

The growth and extent of business in connection with the handling of mails at El Paso is shown by the following statistics:

Years.	Amount of money-orders and postal-notes issued.	Amount of money-orders and postal-notes paid.	Stamp sales and box rent.	Years.	Amount of money-orders and postal-notes issued.	Amount of money-orders and postal-notes paid.	Stamp sales and box rent.
1880	$30,095.86	$3,929.94	.....	1885	$69,042.44	$37,519.66	$11,084.48
1881	51,637.16	14,684.78	$5,648.20	1886	71,775.53	49,109.03	13,198.80
1882	60,332.39	16,486.40	7,643.31	1887	71,597.27	53,150.90	14,731.8
1883	74,386.80	24,715.73	8,985.06	1888	73,157.16	61,902.31	15,184.16
1884	71,753.33	29,757.15	9,027.26	1889	75,208.96	64,871.28	15,874.01

El Paso has free delivery of mail. A large amount of foreign mail passes through El Paso to and from Mexico. Two terms of the United States circuit and district courts for the western district of Texas are held at El Paso annually.

Among the marks of progress and development to be found in El Paso are the following: Three national banks, two of them being United States depositories, an excellent system of water-works, gas-

works, electric lights, a foundry and machine-shop, ice manufactory, refrigerator and meat-packing establishment, extensive car shops, a railroad bridge and two wagon bridges across the Rio Grande, four street-car lines, two of them being international lines connecting El Paso, Tex., and Juarez, Mexico; a $70,000 opera-house, a $98,000 county court-house, four public school buildings, and macadamized streets. Plans are drawn for additional car shops that will employ 300 more men and afford facilities for any repairs of machinery that emergency may demand.

The question of climate and healthfulness is of great importance in the location of a large military post. When put to this test El Paso stands without a rival. Following is a table of comparative statistics of mortality compiled from a report of Dr. Joseph K. Smith as medical director of the military department of Texas. The report includes homicides, suicides, and fatal injuries. Dr. Smith classifies them under the heading "deaths per 1,000 of mean strength," as follows:

San Antonio	36.806	Fort Ringgold	7.574
Fort Brown	20.528	Fort Stockton	5.7
Fort Davis	15.565	El Paso	5.2
Fort Concho	13.736		

Substantial citizens of El Paso authorize the statement that whenever the Government shall determine to enlarge the post and remove it to a more favorable location, land will be donated to the Government for that purpose, in such quantity and at such point as the Government shall decide. There are several possible sites within 5 or 15 miles of the city, possessing all requisites as to extent, water supply, drainage, and railroad facilities, and affording ample space for long-range artillery practice.

Wherefore your committee respectfully recommend the passage of the bill with the amendments above indicated.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 29.

PUBLIC BUILDING AT COLUMBUS, GA.

FEBRUARY 6, 1890.—Recommitted to the Committee on Public Buildings and Grounds and ordered to be printed.

Mr. BANKHEAD, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 188.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 188) for the erection of a public building at Columbus, Ga., submit the following report:

Columbus is at this time the center of eight important railroads, at the head of steam-boat navigation on the Chattahoochee River, and is the seat of numerous factories, steam mills, foundries, iron works, and other industries of various kinds. Its population is rapidly increasing. A post-office building has at all times been rented, and the sum of $1,200 per annum is now paid as rental.

The population of Columbus is about 24,000, being an increase of over 100 per cent. since the census of 1880, and, including the suburban population, it will exceed 35,000. It is a large manufacting city, perhaps the largest in the State, including in this cotton and woolen mills, oil mills, bagging factory, iron works, fertilizing factory, and scores of other enterprising institutions, employing as many as 5,000 operatives. The annual cotton receipts of this place vary from 70,000 to 110,000 bales. A free-delivery system was here established in July, 1887. The gross revenue of the post-office at this place for 1889 was $19,201.52, showing a very healthy increase over years previous. The money-order business will compare favorably with other offices supplying a like population. The population within the delivery of the office is fully 35,000. From this it will be clearly seen that the prospects of a very rapid increase is reasonable. There are eight railroads running into this city. There are several others chartered which will be soon under contract. There is located here the largest iron foundry in the South, besides other foundries of lesser magnitude. With a large banking capital and a surplus of about half that sum, Columbus has bright prospects. The assessed value of city real estate is over $8,000,000.

A bill for a public building at this place, with the same amount of expenditure which this report recommends, passed the House in the Fiftieth Congress.

In view of the growing importance of this place, your committee are of the opinion that, as a matter of economy, the erection of a public building is warranted by the increasing importance of this growing city, situated as it is at the head of navigation on the Chattahoochee River, which flows to the Gulf of Mexico, and which has so large and increasing a wholesale and retail trade. The water power here is

known as the Coweta Falls, and is unsurpassed in the South. The Judiciary Committee have agreed at the present session to recommend the passage of a bill to require terms of the United States courts to be held here.

Wherefore your committee recommend that the bill do pass with the following amendments:

Amend by striking out the words "and fifty" in the tenth line of the first section of said bill, and by also striking out the words "and fifty" in the first line of the second section of said bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 30.

TO CREATE A COURT OF PATENT APPEALS.

February 6, 1890.—Recommitted to the Committee on the Judiciary and ordered to be printed.

Mr. Culberson, of Texas, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 831.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 831) to create a court of patent appeals, submit the following report:

The committee recommend the following amendments:

(1) In section 1, line 4, strike out the word "five" and insert the word "four."

(2) In same section, in line 7, strike out the word "four" and insert the word "three."

(3) In section 4, line 2, strike out the word "eight" and insert the word "seven" and in the same line insert the words "five hundred" between the words "thousand" and "dollars."

(4) At the end of section 5 add the following:

The clerk shall take the oath required by law of the clerk of the Supreme Court of the United States, and shall execute a bond in conformity to the provisions of section 795 of the Revised Statutes.

(5) At the end of section 11 add the following:

And appeals herein provided for may be taken to the first Monday in every month during the term or in vacation, and such appeals shall be entered and set for argument as the court under its rule may determine.

With these amendments the Committee on the Judiciary recommend the passage of the bill, and in support of this recommendation submit the following considerations, taken from a report made by Mr. Culberson, of Texas, upon a similar bill to the House of the Fiftieth Congress:

The court of patent appeals as provided for by the bill and amendments reported by the committee, consists of one chief-justice and four associate justices, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall hold office during good behavior, and receive a salary each of $2,500 per annum.

The associate justices shall take precedence according to the dates of their commission, or, when the date of the commission may be the same, according to age.

The bill provides for the appointment of a clerk, deputy clerks, marshal, and reporter by the court. The fees of the clerk shall be the same as now allowed by law to the clerk of the Supreme Court, but shall not exceed $6,000 a year. The salary of the marshal is fixed at $3,000 per annum.

The pay of the reporter is not to exceed $2,500 annually, unless the number of reports required to be printed shall be increased by order of the court, in which case the salary or pay may be increased not exceeding $1,500 a year.

The court is required to hold one term annually at the seat of Government, commencing on the second Monday in October, and may hold special or adjourned terms as the court may deem proper for the dispatch of business.

The jurisdiction of the court as prescribed and defined in the bill is as follows:

"SEC. 14. The court of patent appeals of the United States shall have appellate jurisdiction in the cases hereafter specially provided for without regard to the sum in controversy.

"1st. 'From the courts of the United States having original jurisdiction of cases touching patents, copyrights, trade-marks, and labels, in all cases involving these subjects.'

"2nd. From the Commissioner of Patents in all cases touching the patentability of inventions, priority of invention among several claimants for patent upon the same invention, and in all cases of re issue and the judicial practice of the Patent Office, also all cases touching the registration of trade-marks or labels and the rights of conflicting claimants therefor.

"SEC. 15. From and after the passage of this act there shall be no appeal from the circuit courts of the United States or any territorial or district court or court of the District of Columbia, in cases touching patents, trade-marks, copyrights, or labels to the Supreme Court of the United States directly, but all such cases formerly appealable to the Supreme Court shall be heard on appeal by the court of patent appeals.

"SEC. 16. There shall be a right of appeal from the court of patent appeals to the Supreme Court of the United States in all cases regardless of the amount in controversy; subject to the same regulations, however, as now exist with regard to appeals to the Supreme Court in causes of admiralty and maritime jurisdiction, and to such further regulations as the Supreme Court of the United States may make.

"SEC. 17. All cases touching patents, trade-marks, copyrights, or labels now pending before the Supreme Court of the United States awaiting trial shall be transferred to and heard by the court of patent appeals."

The expediency and propriety of, if not necessity for the establishment of, such a court as contemplated by this measure will not be questioned if proper consideration be given to the objects that will be attained by the passage of this bill.

Among the results reasonably expected to flow from the organization of a court of patent appeals, attention may be called to the following:

(1) It would enable the public and patentees to determine the value and validity of patents without serious and vexatious delays, and thus promote the interests of all concerned.

(2) It will relieve the Supreme Court of much of the burden imposed upon it by this class of litigation.

(3) The practice in the Patent Office would become thoroughly fixed and understood and, as a consequence, the issue of worthless patents, in which unscrupulous persons deal to the injury of the public, would be greatly diminished, if not entirely suppressed.

(4) It would tend to simplifying the patent laws by constriction and settling questions of doubt which are often used by litigants for the purpose of injustice and oppression.

Without intending to present the reasons at length which induce your committee to arrive at the foregoing conclusions the following observations are submitted:

The life of a patent, at most, is seventeen years, and if it is a valuable one, or intricate and radical, it usually requires one-fourth of that period to introduce it and secure its use by the public.

This, in part, results from the fact that manufacturers who must be relied upon to make and introduce new inventions are slow and reluctant to place in general use inventions which displace or render valueless articles in the production of which they are already engaged.

This is illustrated by experts, who say that to change from one style of gun to another requires from $1,000 to $2,000, and from six months to a year's time to make the model gun from which to make the dies, gauges, special tools, etc., and that to make these latter much time and money are required.

When ordinarily the financial life of a patent is abridged by the difficulties of placing the invention into general use, we can appreciate the importance of speedy decisions when it is infringed or when its validity is questioned.

Under the present condition of the business of the courts it requires, ordinarily, from two to three years to obtain a decision in the circuit court of the United States, and if appealed to the Supreme Court from three to four years are required to obtain a decision. It may be said that the same difficulty and delay attend the determination of all other questions involving the determination of property rights. While this is true, it should be borne in mind that this species or character of property differs from all other kinds of property. The duration of the owner's title is arbitrarily fixed by law. The period is short, for the most part, seventeen years.

The Constitution imposes upon Congress the duty of securing to authors and inventors, for a limited time, the exclusive right to their respective writings and inventions. It is submitted, respectfully, that this duty is very imperfectly discharged when,

by the omission of Congress to provide proper means to determine questions arising out of patents, the life of a patent may be frittered away by the delays of the law.

As has been said, it requires from three to four years after a cause is filed in the Supreme Court to obtain a decision. This does not result from any fault of the judges. It is due solely to the fact that Congress has so broadened the appellate jurisdiction of the court as to overburden the physical capacity of the tribunal.

The original jurisdiction of the court, fortunately, is fixed by the Constitution, and Congress can not add to it or subtract from it, but the appellate jurisdiction of the court is subject to the power of Congress, and that authority has been exercised without proper regard to the physical capacity of the judges or the interests of litigants.

This condition ought not to be continued. It operates in a great many cases as a denial of justice, and every citizen of the United States is interested in bringing about a change.

It may be asked how this measure will contribute to that result? To that inquiry it may be answered that by the sixteenth section of the bill, as quoted herein, it is provided that appeals from the court proposed to be established to the Supreme Court shall be subject to the same regulations as now exist with regard to appeals to the Supreme Court in causes of admiralty and maritime jurisdiction, and to such further regulations as the Supreme Court may make.

By reference to the act of 1875, relating to the practice in the courts of the United States in cases of admiralty upon appeals to the Supreme Court and the rule of the Supreme Court upon that subject, it will be observed that the circuit court is required to make a finding of facts and law, and the review of the judgments of the circuit courts by the Supreme Court in these cases is confined to questions of law only.

It follows that if a similar rule shall be applied to patent cases as the sixteenth section of the act provides, the Supreme Court in reviewing the judgments of the court proposed to be established will pass upon questions of law only, and thus from 15 to 20 per cent. of the time now consumed by the court in these cases in wading through voluminous records endeavoring to find the facts will be saved and profitably applied to the disposition of other business in the court.

It is difficult to perceive any good reason for requiring the Supreme Court to find the facts in patent cases and not in admiralty cases.

Upon the score of economy it is respectfully submitted that the expenses of this court will not exceed $50,000 per annum.

Such a sum of money bears no comparison to the amount that will be saved to the people of the United States by the speedy adjudication of questions arising out of patents. To this should be added also the incalculable advantage that will result to litigants in the Supreme Court of the United States from the saving of time.

The income of the Patent Office for the fiscal year ending June 30, 1888, was $1,122,994.88; expenses, $953,730.14; leaving a surplus turned into the Treasury of the United States of $169,264.49, which, added to the previously credited surplus, makes a balance in the Treasury to the credit of the patent fund of $3,337,666.65.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 31.

ADDITIONAL LAND DISTRICTS IN MONTANA.

February 6, 1890.—Ordered to be printed.

Mr. Pickler, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 525.]

The Committee on the Public Lands, to whom was referred House bill 525, respectfully report:

That the two proposed land districts are subdivisions of what is known as the Helena land district in Montana. This Helena land district embraces over 75,000 square miles, or 48,000,000 acres of land. The land office is located at Helena and is as favorably located as possible for the accommodation of the people in the vast area of country dependent upon the central office. Nevertheless settlers are in some instances compelled to travel, in going to and from the land office, a distance of 1,000 miles. This entails great hardship and exceedingly burdensome expense on new settlers. It is moreover alleged that in contested cases the Helena land office has become so overburdened that decisions are not rendered with that promptness which is desirable in the interests of the settlers and the public service, and that contests in which all proofs were filed and arguments made over one year ago have not yet been reached for consideration by the register and receiver.

The two offices proposed by the bill are so bounded as to furnish additional land office facilities to thickly populated and rapidly growing communities in the western part of Montana and in the Judith Basin, a very fertile part of the State. In both the proposed districts promising mineral regions are being explored, and in consequence of the number of claims located in such districts the volume of mineral entries in each of the proposed districts will add a considerable amount of business to the ordinary agricultural entries.

The district proposed by the bill, to be known as the "Judith land district," will be about 100 miles square and will contain about 6,000,000 acres, of which about 4,000,000 acres have been surveyed. The land embraced in this district, we are informed, has been settled very rapidly of late years, but patent has not issued for any considerable amount of land in the new district.

There are at present about 10,000 settlers in this proposed district, and it is estimated that the district, when settled to its sustaining capacity, will accommodate a population of at least 100,000. The mining camp of Maiden is located in the proposed Judith district, and in this camp several hundred mining claims have been located and there is

now a population of several hundred men engaged in developing mines or in prospecting for additional leads in the mountains surrounding the town of Maiden. The convenience and prosperity of this camp will be very materially advanced by the location of the land office at Lewistown, some 20 miles distant. At present the miners and agricultural claimants in this proposed district are compelled to travel an average of about 200 miles to reach the land office at Helena.

The committee is of the opinion that this Judith land district is so bounded as to entail very trifling expense in the preparation of plats and tract-books of surveyed lands, and that the proposed land office, if located at Lewistown, would be, when so located, most convenient and accessible from every part of the district.

The new district proposed and designated as the Missoula land district embraces the western part of the State of Montana, including a portion of the counties of Beaverhead, Deer Lodge, and Choteau, together with the entire county of Missoula. The exact acreage of the district proposed is difficult to determine, owing to the irregular boundary of the State on the south and west, the boundary of the State on the south and west being the boundary line of the proposed district, but it is reasonably safe to estimate that the new district will contain 15,000,000 acres, composed of agricultural and mineral land lying west of the main range of the Rocky Mountains.

This district is so bounded that the expense of arranging tract-books and plats for the new office will be insignificant.

In the Cœur d'Alene Mountains, in the southwesterly part of this district, mines in large numbers have been discovered and are being developed, preparatory to the acquisition of title from the United States.

This new mining district is at present about 200 miles distant from the Helena land office.

The central and northern part of this proposed Missoula land district is a very fertile region of country, while the Bitter Root Valley, in the southern part of the district, is one of the most beautiful and fertile valleys in the Rocky Mountains. The main line of the Northern Pacific Railroad extends through the proposed district from southeast to northwest a distance of 200 miles. From Missoula a branch road extends southward and up the Bitter Root Valley, a distance of about 60 miles. Settlements are growing with great rapidity along these lines of road, while in the mountains the mining interests are being rapidly developed. North of Flathead Lake, in the district, settlement is progressing very rapidly, and demands for additional surveys have been made for the accommodation of the incoming population.

At present, persons residing in this proposed district are compelled, on an average, to travel about 250 miles to reach the Helena land office. It is quite evident from the character of the country, the diversity of its resources, the inducement to settlement, together with the rapid settlement in progress, that the business of the new land office will amply justify its establishment, while its creation will prove of very great convenience to the settlers.

The committee has referred the bill to the Secretary of the Interior for examination, and under date of January 24, 1890, the Secretary transmits the opinion of the Commissioner of the General Land Office, favoring the proposed districts, and transmitting a map of the State of Montana, with the lines of the proposed districts marked thereon. The letters of the Secretary of the Interior and the Commissioner of the General Land Office read as follows:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January* 24, 1890.

SIR: I have the honor to transmit, in reply to your request of the 16th instant for the views of this Department on H. R. bill No. 525, "to establish two additional land offices in the State of Montana," a copy of a letter of the Commissioner of the General Land Office favorable to the proposed measure, together with a map showing location of the proposed districts.

I have no objection to the passage of the bill under consideration.

Very respectfully,

J. W. NOBLE.
Secretary.

Hon. LEWIS E. PAYSON,
Chairman Committee on the Public Lands,
United States House of Representatives.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, D. C., January 23, 1890.

SIR: I have received by your reference for report a communication from the honorable chairman of the House Committee on the Public Lands, dated the 16th instant, inclosing a copy of bill H. R. 525, "To establish two additional land offices in the State of Montana."

In reply I have the honor to state that it is believed that the establishment of the districts as indicated in the bill in question will greatly serve the convenience of the settlers and others in those portions of the State, and as but little trouble or expense will devolve upon this office in the preparation of tract-books for them I have no objections to offer to the proposed measure, and return herewith the bill, together with a diagram of the State showing the location of the proposed districts.

Very respectfully,

LEWIS A. GROFF,
Commissioner.

Hon. JOHN W. NOBLE,
Secretary of the Interior.

On full consideration of all the facts, the committee respectfully recommends that the bill do pass.

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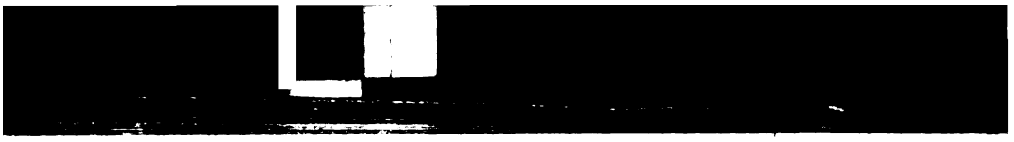

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 32.

ASSISTANT SECRETARY OF WAR.

February 7, 1890.—Recommitted to the Committee on Military Affairs and ordered to be printed.

Mr. Cutcheon, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 475.]

The Committee on Military Affairs, to which was referred the bill (H. R. 475) "To establish the office of Assistant Secretary of War," have had the same under consideration, and would submit the following report:

This bill provides for the establishment of the office of Assistant Secretary of War, defines its duties, and the mode of their assignment.

The Assistant Secretary will be appointed on the nomination of the President and confirmation of the Senate.

This legislation has been recommended by every Secretary of War for the last ten years. It is not expressly provided in the bill, but yet it is understood on all hands that the Assistant Secretary will be selected from civil life.

Within the past few years duties of a strictly civil nature have been multiplied upon the Secretary of War, while the construction of heavy ordnance and the proposed erection of sea-coast defenses will add to the magnitude of his purely military functions.

The following memorandum will exhibit the extent and duties of the War Department as compared with other Departments of the Government, and the number of assistants provided:

Memoranda on a bill to create the office of Assistant Secretary of War.

The President, as constitutional chief of the Army, acts through his Secretary of War. The system contemplates not only a civil officer at the head of the War Department, but a civil direction of the military establishment.

In addition to this control of the military establishment the Department, by virtue of legislation, is also responsible for the performance of a large number of strictly civil duties.

The improvement of rivers and harbors, the supervision of the construction of bridges over navigable waters, the furnishing of evidence for pending pension claims, and other civil duties have become the larger part of the work of the Department.

In the last four years one hundred and fifty-five acts were passed authorizing the construction of bridges over navigable waters. The duties of the Secretary of War thereunder include some of all of the following: Approval of plans and location, fixing rates of toll, and of compensation to be paid by railroad companies, and rules and conditions under which different companies may use the bridge, and the decision "of all matters at issue" concerning which the parties fail to agree.

Of the 1,624 clerks and employés of the Department, under the immediate direction of the Secretary of War at the seat of Government, 718 are assigned to divisions whose duties are entirely civil, 323 are assigned to bureaus and divisions whose duties are mostly civil, and only 583 are assigned to bureaus or divisions pertaining directly to the maintenance of the military establishment.

Number of clerks employed in the different Executive Departments and number of assistant heads of each Department.

Department.	Clerks.	Assistants.	Department.	Clerks.	Assistants.
Interior	2,206	2	Navy	138	.....
Treasury	1,814	2	Agriculture	104	1
War	1,277	.....	State	39	3
Post-Office	157	3	Justice	48	3

There are 11,134 civilians under employment at large by the War Department, exclusive of those employed in this city; 7,525 of these are not engaged in work relating to the military.

The expenditures of the War Department were last year $46,654,121.74, of which only about one-half was for the maintenance of the military establishment.

The heads of the different Bureaus of the Department are military officers without civil training or experience. There is only one civilian employé in the Department, except the Secretary, receiving a salary above $2,000 a year, and there are only 13 clerks of that grade.

There are many combined questions of civil administration and law arising; but the Department has no civilian above the grade of clerk and no legal officer at all, as most of the other Departments have, to assist in their consideration.

The Judge-Advocate-General's corps consists of officers trained in military law only.

An Assistant Secretary is needed—

First. To strengthen the civil influence in the Department; to assist in the civil direction of the military establishment, as constitutionally intended, and in the performance of the strictly civil duties of the Department enjoined upon it by law.

Second. To preside over the Department in the temporary absence of the Secretary.

The President is permitted by law to designate a general officer to act as Secretary of War in such a contingency. The custom is to designate the senior officer present. If it be the Major-General Commanding, he is called upon to pass on his own reports and recommendations. If it be a junior officer, he may be called upon to review the acts and reports of his superior officers. It can not always be the same officer, and never one familiar with the civil duties of the Department; and as to the Army itself, the present system is calculated to produce irritation.

Third. As a matter of economy.

It has become impossible for the Secretary to perform the routine work devolving on him and still devote proper time to the larger administrative questions arising, careful attention to which is the greatest economy. There is at present no civilian assistant of sufficient authority to enable him to lawfully relieve the Secretary of the former by signing routine papers, etc., or to assist him in the latter.

It were better even to employ an Assistant Secretary, if needs be, at the expense of dispensing with subordinates receiving equal salary.

Every Secretary of War since 1880 has asked for the appointment of an assistant, either in his official reports to the President or before committees of Congress.

When it is remembered that during the last fiscal year there was appropriated, to be expended under the direction of the Secretary of War, the sum of $66,033,645.79, and that during the same period there was actually expended under his supervision the sum of $46,654,121.74, it will be readily realized that a very slight saving upon this vast sum will more than repay the small salary provided.

The committee recommend that the bill be amended by striking out the words "five thousand" before the word "dollars," in section 2, and inserting in lieu thereof the words "four thousand five hundred," and add to the section the words "payable monthly," and that, as so amended, the bill do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 33.

RETIRED LIST OF THE ARMY.

February 7, 1890.—Recommitted to the Committee on Military Affairs and ordered to be printed.

Mr. Cutcheon, from the Committee on Military Affairs, submitted the following report, with an amendment in the nature of a substitute.

REPORT:

[To accompany bill H. R. 474.]

The Committee on Military Affairs, to which was referred the bill (H. R. 474) for the relief of the retired list of the Army, report that they have had said bill under consideration, and report said bill back with the recommendation that it be amended by striking out all after the enacting clause and by inserting in lieu thereof the following, suggested and recommended by the Secretary of War, namely:

That when officers who have been placed on the limited retired list, as established by section seven, chapter two hundred and sixty-three, page one hundred and fifty, volume twenty, United States Statutes at Large, shall have attained the age of sixty-four years they shall be transferred from said limited retired list to the unlimited list of officers retired by operation of law because of having attained said age of sixty-four years.

This substitute or amendment is simpler in form, while it accomplishes the same purpose, and is self-operating, and provides relief permanently as well as for the present.

The need of this legislation is stated clearly and forcibly by the Secretary of War in his annual report, on page 6, as follows:

RETIRED LIST.

Under the acts of Congress approved June 18, 1878, and March 3, 1883, the retired list—other than retirements under the act of June 30, 1882, for forty years' service, and by virtue of the sixty-four years' provision—is limited to four hundred. I invite your attention to the fact that the Adjutant-General reports that there are now forty-eight officers of the Army who have been found incapacitated for active service and recommended for retirement, waiting to be placed upon the retired list, which can not be done, as the list is full. The average number so waiting retirement during the last six years is thirty-seven, and during the past two years it has been increasing. The result is that these incapacitated officers continue to draw full pay while rendering no service whatever for the Government, and "other officers who are doing the duty of these incapacitated officers are kept out of their promotions and out of the pay they should receive for the duties they are discharging." It is a benefit to which the incapacitated officer has no claim, and a great injustice to all officers in active service whose promotion is retarded thereby. Although in some corps the need of officers is pressing, the Department is powerless to fill the places of those thus incapacitated.

The Adjutant-General recommends that all restrictions be removed as to the number of retirements. Such action has before been recommended by the late General Sheridan, as well as by my immediate predecessor. In view of the fact, however, that the present exigencies of the case can be met by an extension of the limit, and that there is reasonable ground to suppose that it would also provide for the future,

I refrain from recommending so radical a change, but do recommend that the limit be extended to four hundred and fifty, or that an act be passed authorizing the special retirement of not to exceed fifty officers.

If it is objected that the list is already large, it should be remembered that the act of July 28, 1866, expressly provided that a large number of the original vacancies in the regular Army should be filled by officers who had been wounded in the volunteer service. Many of these have since been placed on the limited retired list, and, indeed, of the full four hundred the record shows that three hundred and seventy-five were in the service during the war of the rebellion. Also of the four hundred officers thus retired ninety-one would have been now on the unlimited list by reason of age, leaving only about three hundred justly chargeable to the limited list.

The letter of the Secretary of War, inclosing the draught of bill, which meets the approval of the committee, is also appended as a part of the report.

The committee believes that the bill is in the line of both efficiency and economy.

It will transfer nearly sixty officers who are incapacitated for active service from the full pay of the active list to the three-quarters pay of the retired list, and will allow younger and more vigorous men capable of active service to take their places.

It will send a current of fresh blood and new life throughout the Army, giving it new vigor and greater usefulness.

The committee recommend that the bill be amended as indicated and that as amended it do pass.

WAR DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, January 11, 1890.

MY DEAR SIR: I return herewith House bill 474, on which you invite my views in yours of the 10th instant. It seems to me a simple, feasible, and just plan for securing the relief needed.

I would invite your attention, however, to the following:

(1) The bill, as at present, will only afford temporary relief. It would be better if it were made general. You already have this matter in mind, and I would simply suggest that it might be amended in the form or substantially the form of the proposed bill which I sent you on the 6th instant.

(2) I would suggest that in the twelfth and thirteenth lines on page 2, the words "in the order of the date of the recommendation for their retirement" be omitted. It has been my practice in ordering a retirement to pay no attention to the date of the recommendation, but to consider only the promotions that would be made thereby, and to make such a retirement as would promote deserving officers who had served in their grade the longest. The omission of these words would continue with the Secretary this discretion, which I do not believe would ever be abused, and the absence of which would in many cases work injustice.

(3) I suggest for your consideration whether there is any need for the last section of the bill. There is a general provision for the examination of officers by an army retiring board (see section 1246 of the Revised Statutes), and sec. 7, ch. 263, 20 Stats. provides that the limited retired list shall not exceed four hundred.

The data which you asked of General Kelton I will forward to you in a separate communication as early as possible.

Yours respectfully,

REDFIELD PROCTOR,
Secretary of War.

Hon. B. M. CUTCHEON,
Chairman Committee on Military Affairs, House of Representatives.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 31.

HEIRS OF THOMAS BLACK.

February 7, 1890.—Recommitted to the Committee on War Claims and ordered to be printed.

Mr. Culbertson, of Pennsylvania, submitted the following

REPORT:

[To accompany bill H. R. 1512.]

The Committee on War Claims, to whom was referred the bill (H. R. 1512) for the relief of the heirs of Thomas Black, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Forty-eighth Congress, a copy of which is hereto annexed and made a part of this report.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[House report No. 2677, Forty-eighth Congress, second session.]

Under the act of March 3, 1871, this claim was filed by Thomas Black, a native of Maine, who had moved to South Carolina prior to the late war, and had acquired property on Edisto Island in that State. When the claim was filed, Mr. Black was old and infirm, and died September 25, 1877, leaving three daughters, and leaving no personal property to be administered, as all the parties were very poor at the time of his death.

According to law, the commissioners could not receive testimony after March 10, 1879. Owing to the death of Mr. Black, and the poverty of his three daughters, there was no administration until May 13, 1879, and the testimony was then taken and filed with the commissioners, May 17, 1879, but the commissioners did not consider or act upon the testimony on the ground that it was filed too late, and they had no jurisdiction to act upon it. There was no adverse action on the claim itself.

The first question then is, should the claim be now considered, if otherwise meritorious, notwithstanding the proof was filed two months and seven days too late for the commission to exercise jurisdiction? It appears that the death of this old man, poor and infirm, and the leaving in poverty three daughters, sufficiently accounts for the delay, since there was no person competent to press the claim until May 13, 1879, and the testimony was filed in four days after administration granted; and especially should the United States be lenient in the case of this claim, when it is so clearly and conclusively shown that Thomas Black was one of the few in the South who remained at all times loyal to the Union during the war.

This brings us to consider the proof of his loyalty. This should be clearly established, for there is a presumption that one who resided in the Confederate lines during the war was not loyal to the Union, although there were several loyal men who were so resident at Charleston, S. C., and who were well known to be such. Among them, as appears from the testimony, was James L. Petigru, esq., the ablest lawyer of his day in the State; and the loyalty of Thomas Black, an humble citizen, is fully established by the testimony of Hon. Charles Macbeth, Mayor of Charleston during the war, and of Hon. James B. Campbell, a prominent citizen of Charleston, who was elected to the United States Senate by the first South Carolinia legislature which convened after the war had ended, and by other reliable witnesses.

Mr. Black was arrested and confined by order of General Ripley, commanding the Confederate forces in and near Charleston, on account of his adherence to the cause of the Union, and with difficulty obtained his release from imprisonment, as he would not declare adherence to the Confederate cause. On this point of loyalty there does not seem to be any room for doubt from the evidence. The claim arises as follows: Mr. Black's home was on Edisto Island, and the Confederate forces ordered him to leave the island, which was about to fall into the hands of the United States forces. He was thus compelled to go to Charleston, but returned to the island to look after his property, when he was taken by armed negro troops on board the United States gun-boat Penguin, whence he was released through the kind offices of Captain Boutelle, then of the United States Navy, and now of the Coast Survey, who states that he was released without parole and unconditionally, the only instance of the kind that he remembers to have occurred.

The soldiers who landed at Edisto Island, after occupying it, tore down the houses on Mr. Black's plantation in order to use the lumber for Government purposes, and also took for the Government use a large barge, a pile-driver, a cart and harness, and the provision crop of Mr. Black. These articles, with some others taken, were for the convenience and use of the Army.

The barge was a 14-oared boat, 45 feet long, and was worth $375, and the pile-driver $275, according to the testimony of Charles Deignan, an expert of forty years' experience in ship and boat building. The items of the claim are proven by an eye-witness, and the values are substantiated by testimony of several witnesses, excepting the lumber charged for in the claim. While it is in evidence that this lumber was taken and used by the United States troops, yet the quantity of lumber is not given, and we therefore do not consider this item proven.

The rest of the claim appears to us to be fully established, and we therefore recommend that the bill do pass, with the following amendment as to the amount: Strike out "nine hundred and ninety-two dollars and sixty cents," and insert instead thereof "six hundred and seventeen dollars and sixty cents" so that the claim shall be reduced from $4,992.60 to $4,617.60.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 35.

PUBLIC BUILDING AT THE CITY OF ALEXANDRIA, LA.

February 7, 1890.—Recommitted to the Committee on Public Buildings and Grounds and ordered to be printed.

Mr. Lewis, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 401.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 401) for the erection of a public building at Alexandria, La., have had the same under consideration, and report:

A bill for the erection of a public building at Alexandria, La., was reported favorably to the House by the Committee on Public Buildings and Grounds of the Fiftieth Congress, and was placed on the Calendar of the Committee of the Whole House on the state of the Union, but never reached for consideration.

Your committee agree with the committee of the last Congress that a Federal building should be erected at Alexandria, and in support of this view adopt substantially the report made to the last Congress, as follows:

Alexandria is the county seat of the parish of Rapides, La., one of the largest and most populous parishes in the State.

The town is situated on the Red River, about 150 miles from its mouth, and is the geographical center of the State. Several railroads are already there, two more are now under process of construction towards the town, and others are projected.

In the section of country of which Alexandria is the entropôt are the almost illimitable forests of long-leaf pine timber now in such great demand by the lumbermen of the North and West. This pine-timbered land has been purchased to the extent of hundreds of thousands of acres by capitalists of the North and East, and great lumber industries are beginning to develop.

The Red River Valley, in which Alexandria is situated, is unsurpassed for the fertility of its soil and the variety of its products.

Plantation after plantation for hundreds of miles up and down the river are to be found growing in equal luxuriance the sugar-cane, cotton, corn, and the smaller grains.

Alexandria is thriving and growing, and well situated to become in the near future a town of the first importance in that section of the country. It is believed to have the best prospects of any town in the State.

It is one of the points where the Federal courts are held in Louisiana. Two terms of the United States circuit and district courts are annually held there, and quarters are now provided for said courts in the parish court-house. But this is unsatisfactory, owing to the lack of room in the parish court-house for offices for the United States marshal and the clerk of the Federal courts, and also because of the liability of the terms or sessions of the State courts to conflict with those of the Federal courts.

The business of the post-office at Alexandria is annually increasing, and the rented building in which it is kept does not afford the proper facilities for the convenient transaction of the business.

This office is the distributing point for the mails going east and west for a considerable extent of country.

Across the river from Alexandria, and opposite, is the flourishing town of Pineville, where is situated a national cemetery in which lie buried the Union dead who

fell in the military operations in the Red River alley in the late war. The late Congress made an appropriation to construct a macadamized road to this cemetery from the river, and the same has been completed.

In view of the Federal business now being transacted at Alexandria, and the generally promising outlook for the town and for the section of country in which it is situated, your committee believe it to be in the line of a liberal and enlightened public policy to erect a substantial and suitable building there for the accommodation of the business of the Government.

The committee are of opinion that $50,000 is sufficient for the building required, and they report the bill (H. R. 401) back to the House with the recommendation that it do pass with the following amendments, viz: In line 10, strike out the words "one hundred" and insert "fifty."

In line 21, strike out the word "thirty" and insert "forty."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 36.

FORMAN MATHEWS AND DAVID STOUT PARKER.

February 7, 1890.—Recommitted to the Committee on the Judiciary and ordered to be printed.

Mr. Buchanan, of New Jersey, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 4329.]

This bill passed the Senate in the last session of the Fiftieth Congress and was reported unanimously from the Committee on Claims in the House during that session, but was not reached upon the Calendar for want of time.

For the reasons set forth in the report of that committee, appended hereto, the committee recommend that the bill do pass when amended as follows:

Amend by adding to the bill the words "with leave to either party to appeal to the Supreme Court of the United States."

This claim was referred to the Court of Claims by the Senate Committee on Claims January 26, 1884, for proceedings under section 1 of the act of March 3, 1883, commonly known as the Bowman act. On the 21st day of February, 1888, the following proceedings of said court were certified to that committee:

[Court of Claims. Congressional cases No. 9 and 62. David S. Parker and Forman Matthews v. The United States.]

The claims in the above-entitled suits having been transmitted to this court by the Senate Committee on Claims and the Committee on Claims of the House of Representatives, and the Attorney-General having appeared for the defendants and the suits having been brought to a hearing, the court, upon the proofs and evidence, and after hearing Charles F. Benjamin, esq., of counsel for the claimants, with whom was Henry W. Garnett, esq., and Lewis Cochran, esq., of counsel for the defendants, finds the following facts:

I.

The schooner *Twilight*, of Perth Amboy, N. J., laden with 363 tons of Cumberland coal, left Georgetown, D. C., April 26, 1864, bound on a voyage to Bergen Point, N. J. At 2 a. m. April 28 she anchored on the Horseshoe Shoal, in Chesapeake Bay, below Fort Monroe, because of darkness and threatening weather. About 8 a. m. she, as a measure of safety, weighed anchor and started for Hampton Roads, as other vessels about her were doing, desiring a better harbor.

II.

When the schooner started from the Horseshoe the atmosphere was clear; objects could be plainly seen at a distance; the atmosphere so remained during the time occupied by the events hereinafter set forth. The tide was running ebb at from 2 to 3 knots per hour, and the schooner advanced through the water at about the same rate; the distance passed over was about 2½ miles; there was a brisk wind from north to north-northeast, and the schooner quite properly moved under jib and mainsail, with main peak dropped.

in this case, a-starboard, head steadily falling off
tion until wind brought dead aft, then all booms
starboard, and the schooner is in position to bea
head wind, under the guardship's stern, back to h
shoe.

IV.

While the *Twilight* was in communication with
steam frigate *Iroquois* was coming down the road
way to her anchorage off Fort Monroe, in charge of
station to direct the movement. The purpose of
down past the shipping in the roads and below the
of the guardship, and then to turn her across the
guardship and the Fort Monroe shore to her anc
near that shore. This plan was communicated to t
was approved by him. It was the safest and best p

V.

Before the *Iroquois* came abreast of the Ripraps th
another Government pilot who was regularly attach
better acquainted with the position of the desired p
of pilots was made by the request, authority, and ord
mentioned pilot, immediately upon taking charge, or
so brought the frigate round to port. The vessel wa
knots. This movement would cause the steam-ship t
the guardship on the latter's port side, the side unde

VI.

When the steam-ship began this movement the *Tw*
of the guardship; after the steam-ship's movement b
a-weather, thus threatening collision. The comma
pilot of the impending danger, saying he thought t
and told the pilot to slow the engine, but not recei
commander immediately took the command of the v
engines immediately to be slowed, stopped and bac
doing all in his power, after relieving the pilot, to a
necessarily ineffectual at that time, by reason of the s
the frigate and the schooner.

VII.

The approach of the steamer was not observed by
the latter had begun to forge ahead on her new cour
a-port, that is, hard a-lee, and an effort was made to
luffing the vessel. These actions were necessarily i
imity of the steamer. The jib-sheet

X.

The owners of the *Twilight* were David S. Parker and Forman Matthew, citizens of the United States and residents of the State of New Jersey: the claim has not been assigned and no part thereof has ever been discharged.

XI.

With an ebb-running tide and a crowded roadstead, the steam-ship's speed was greater than (under the circumstance that she was merely returning to an anchorage) was prudent even in the face of a head wind. The schooner was seen luffing in under the guardship's lee, with peak lowered; it was not an error of judgment to suppose that she would not suddenly fill away across the steam-ship's course. The fact that she would suddenly fill away for the purpose of standing out under the guardship's stern could hardly be anticipated. The master of the schooner erred in not looking to leeward before putting up his helm. Had he so looked he could have held his luff until the danger of collision was past. The pilot of the *Iroquois* erred in running at so great speed under the circumstances and in disregarding the warning of the commander. If, when the schooner put her helm up, the pilot had immediately given the orders that were subsequently given by the commander of the *Iroquois*, the *Iroquois* might have passed astern of the schooner instead of striking her amidships.

No reason is shown for the guardship's order to the *Twilight*, a peaceable vessel, pursuing a legitimate commercial voyage.

The statute under which the claim was referred to and considered by the court does not require nor authorize a finding of conclusions of law upon the facts judicially ascertained and reported, as above exhibited; hence, the committee is without the aid or advice of the court upon the question of the legality of the claim of these parties to be paid for their lost vessel. It is furthermore extremely difficult to gather from the statements of facts found by the court how far, if at all, the alleged rights and equities of the claimants are affected by the suggestion in Finding XI, that the master of the schooner erred in not looking to the leeward before putting up his helm; and the finding that had he done so he could have held his luff and the collision might have been averted.

From the statements of fact in Findings IV, V, and VI it would not seem that the master of the schooner could reasonably have anticipated the reckless and unnecessary change of course on the part of the frigate that resulted in the collision; and the statement in Finding XI, that the pilot of the frigate might have taken that vessel under the stern of the schooner after the putting up of the helm of the latter, may perhaps be construed as acquitting the schooner of the suggestion of contributory negligence contained in a preceding part of the same finding.

The pending bill proposes to remand the case to the Court of Claims, with jurisdiction, upon a full hearing, to enter such judgment therein as under the law and facts right and justice may require; and such a disposition of it seems to your committee not inappropriate, in view of the voluminous and complex facts of the case, as attested by the findings of the court. This was the course followed in the cases of the schooner *Ada A. Andrews* (act of June 22, 1874), the schooner *Flight* (act of January 12, 1877), and the schooner *Don Pedro* (act of March 3, 1879), and it has the merit of enabling the rights of the United States and the citizens affected to be finally determined by the Supreme Court, under the operation of section 707, Revised Statutes.

The following cases, decided by the Supreme Court of the United States, will indicate very clearly the rules of law applicable to this class of cases, and from these it will be observed that, where the fault of the injured vessel bears but a small proportion to the faults of the party causing the injury, it is not to be regarded as such contributory negligence as will defeat a right to recover:

Newton *v.* Stebbins, 10 How., 586.
The Oregon, 18 How., 570.
The Louisiana, 21 How., 1.
Haney *v.* Steam Packet Company, 23 How., 287.
The Carroll, 8 Wall., 302.
City of Paris, 9 Wall., 634.
The Maria Martin, 12 Wall., 31.
The Falcon, 19 Wall., 75.
The Great Republic, 23 Wall., 20.

The claimants have not asked for other or further relief than that proposed by the pending bill, namely, that their rights should be determined judicially.

Your committee, therefore, in view of all circumstances, are of the opinion they should be accorded this right.

The bill, therefore (S. 2013), is reported back without amendment, with the recommendation that it pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 37.

WORLD'S FAIR.

February 14, 1890.—Recommitted to the Select Committee on the World's Fair, and ordered to be printed.

Mr. Candler, from the Select Committee on the World's Fair, submitted the following

REPORT:

[To accompany bills H. R. 6883 and 6884.]

The Select Committee on the World's Fair, to whom was referred the bills H. R. 520 and 5304, entitled, respectively, "A bill for the location of the universal exposition in the United States, in the year 1892, at the city of St. Louis, State of Missouri," and a bill locating the world's fair of 1892 at St. Louis, Mo., and creating a corporation to carry on the same;" and bills H. R. 809, 5429, and 5432, the first of which being entitled, "A bill to aid and secure the commemoration of the four hundredth anniversary of the discovery of America;" and the two remaining entitled, "A bill to provide for the three Americas and world's exposition at the national capital in 1892:" and bill H. R. 3280, entitled "A bill to provide for the celebration of the four hundredth anniversary of the discovery of America by Columbus, by holding an exposition of the arts, industries, manufactures, and products of the world, in the year 1892, in the city of Chicago, Ill.;" and bill H. R. 5234, entitled "A bill to provide for celebrating the four hundredth anniversary of the discovery of America by Christopher Columbus, by holding an international exhibition of arts, sciences, manufactures, and the product of the soil, mine, and sea, in the city of New York, in the State of New York;" and a resolution introduced January 20, relative to the selection of a site, and drafting of a bill with provision for debate thereon, have had the same under consideration.

The bills which were referred to the committee for their consideration proposed different locations, and in the judgment of the committee it was not practicable to present one bill covering all the localities. They therefore beg leave to submit the two accompanying bills, numbered 1 and 2, as substitutes for said bills, and entitled, respectively, "A bill to provide for celebrating the four hundredth anniversary of the discovery of America by Christopher Columbus by holding an international exhibition of arts, industries, manufactures, and the product of the soil, mine, and sea, in the city of ———, in the year 1892," and "A bill to provide for celebrating the four hundredth anniversary of the discovery of America by Christopher Columbus by holding an international exhibition of arts, industries, manufactures, and the products of the soil, mine, and sea, at the national capital in the year 1892," the first of which is intended to comprehend all that will be required to successfully organize a world's fair in either one of the three cities—New York, Chicago, or St. Louis—and to which such amendments as to details

by this committee, immediately after the reading the roll of members, and that as each member's na voce, his choice of the place for holding the Wo ceives a majority of the votes cast on the first bal until some one place shall have received a majorit

For years the people of the United St enthusiasm and unanimity, in various wa in the public press, and through their Repr signified their earnest desire that the four h discovery of America by Christopher Colu and commemorated by this nation in 18 generation record its grateful appreciation o and the courageous faith of this great man, tributed so much to the progress and eleva not only the people of this country, but the be invited to participate and contribute to t tion. It is indicated by a recognized publi bration shall include appropriate ceremon exhibition, unsurpassed and unequaled, if commemoration that has preceded it.

The committee, in unanimously presentin the celebration proposed is a deserved recog of Christopher Columbus, and that it will le States to appreciate, with increased patrioti institutions and the achieved national great that by the interchange and acquaintance those of other nations, who will meet toge and prosperity of all will be promoted.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 38.

AMERICAN COASTWISE SAILING VESSELS.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Hopkins, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT:

[To accompany bill H. R. 1003.]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H. R. 1003) entitled "A bill exempting American coastwise sailing vessels piloted by their licensed masters, or by a United States pilot, from the obligation to pay State pilots for services not rendered," having had the same under consideration, report the views of the minority accompanying a similar bill made to the Fiftieth Congress, and which they adopt as the report of the committee, and which is as follows:

This bill in effect provides that an American coastwise sailing vessel, already adequately piloted, shall not be obliged to pay a State pilot who has performed no service for the vessel, and whose services are not needed.

Inasmuch as this bill simply embodies the well recognized rule of justice that no person should be compelled to pay for services not accepted nor rendered, it is incumbent on those who oppose it to give most cogent reasons for retaining laws which give State pilots authority to collect fees from vessels already adequately piloted that do not accept nor need their services.

The reason given by the State pilots and their friends for maintaining such exceptional legislation in the ten States which are affected by this bill may be grouped under five heads.

First. It is contended that State pilots can not be maintained for such vessels as require their services unless coastwise sailing vessels that do not need their services are required to contribute to their support.

If this be true, then the act of Congress of 1852, which exempted coastwise, lake, and river steamers piloted by their own master or officer, who had been examined and found competent to do so by a United States board, from the obligation to pay State pilots not used, ought to be promptly repealed, for it is rank injustice to exempt steamers generally owned by wealthy corporations from contributing to the support of State pilots, and at the same time to compel the comparatively poor owners of our small coastwise sailing vessels, doing business in competition with these steamers, to pay onerous fees to maintain State pilots whom they do not need. Yet the act of 1852 respecting pilotage for steamers has worked so successfully that no one asks for its repeal. And if right for steam-vessels in the coastwise trade, it is grave injustice not to give coastwise sailing vessels the same privilege and the same exemption.

care doctors for the sick.

Moreover, inasmuch as three-fourths of pilots are foreign vessels, the practical ef States which this bill would modify is to co can vessels to contribute to the support o We know of no reason why foreign vessels of maintaining pilots for their own use.

Experience has shown in the States which coastwise vessels to pay State pilots not use well supplied with necessary pilots as they w erally the number is less than before the o now the supply is only equal to the demand, fees existed the temptation existed to main demand.

Further than this, the testimony of ship-ow panies is that the service rendered by each pi percentage of shipwrecks under the system which have adopted the principle of this b under the old system of compulsory fees. In service under the new system is more efficien that under the system of compulsory fees t whether he did his work well or ill, or not at untary system fidelity and efficiency in a pilot business. The memorial of all the insuranc which have had experience under both the s without service and the system of voluntary by this bill, favoring this pilotage system, is property and life is not increased by compuls

Second. It is contended that however much argument for the principle of this bill for th Western, Southwestern, and Pacific States w that in the ten South Atlantic and Gulf Stat ginia, North Carolina, South Carolina, Georgi sissippi, Louisiana, and Texas, which still r coastwise sailing vessels, the number of vessel of which require State pilots, is so small tha maintained unless coastwise

report. Yet those Northern ports which have as small or a smaller number of foreign arrivals than most of the ports affected by this bill maintain a sufficient number of good pilots as successfully now as they did when the payment of pilotage fees for services not rendered was compulsory.

The suggestion that the shifting bars in the approaches to Southern harbors make it essential that a larger proportion of the vessels entering should be piloted by State pilots than in Northern harbors does not affect the argument, because it there is more demand for State pilots in such harbors the larger supply will follow. This bill does not relieve any vessel from pilotage. It simply provides that where the master or mate of a coasting sailing vessel has been found by the proper United States board, the same board that examines officers who pilot coastwise steamers, competent to pilot his own vessel into or out of a harbor having such shifting bars, or where such a vessel is towed into or out of such a harbor by a steam-tug piloted by a United States pilot who knows the channel and the changes in bars as well as a State pilot, then such vessel shall not be obliged to pay a State pilot not needed nor used.

Third. It is claimed that the State pilots do really perform services for coastwise sailing vessels which they do not pilot, in that they stand as sentinels far outside of harbors, ready to pilot any that need them, and warning all vessels of dangers.

This claim of the State pilots sounds well, but an examination of the facts show that it is unsubstantial. True, the pilots go outside of harbors, because there is the only place where they can find customers. This does not justify a law compelling passing vessels, which do not need nor accept their services, to pay them fees, any more than the farmer would be justified in demanding a law to compel passers by to pay him the price of his farm produce on the ground that he had braved the storm and stood "sentinel" in the market to offer his wares to those who approached.

Notwithstanding the pilots claimed that they made it a business to warn all vessls of dangers, yet they failed to present any evidence of instances where they had done this in the case of vessels that had not accepted their services, as they were asked to do by members of the committee. But whether this be so or not, this can not lay the foundation for a claim that they perform any services to a coasting vessel which is piloted by his own licensed pilot or which is towed by a steam-tug in charge of a United States pilot, the only vessel affected by this bill, for the reason that such vessel is under the charge of a United States pilot who knows as much about the channel and dangers as the State pilot.

The fact stands out clearly that the large amount of money exacted by State pilots from the class of vessels relieved by this bill is taken from the struggling owners of such American vessels by force of law in ten States without any return.

Among the instances of such unjust exactions brought to our attention was one where a small schooner, which had not yielded any profit for a year to the poor men who owned her, entered and departed from the harbor of Charleston, S. C., by being towed in and out by a steam-tug under the charge of a United States pilot (which is the usual way in which coastwise sailing vessels now go in and out of Southern harbors), paying the tug $50 for the service. Yet the poor owners of this American schooner were compelled to pay the State pilots $127 for services not rendered, a sum of money far beyond the net revenue derived

and there would be far more propriety in
vessels should pay fees to a licensed tug-bo
to a State pilot whose services are not need

Fourth. It is claimed that we now have
the ten South Atlantic Gulf States affected
well and secures efficient pilotage of vessel
wise to tamper with the system as provide
safeguards to life and property on ship-boar

This criticism can not stand for a moment
stood.

We have one uniform pilotage system und
all steam-vessels of the United States in the
trade, under which a United States board, lo
bors and collection districts, examines the m
sel, and if he is found competent licenses hi
such port or district; and the steam-vessel th
tug under the charge of a United States pil
obligation to pay State pilots whose services
system works so efficiently that nobody asks f

The sole effect of this bill, if passed, woul
vessels in the coastwise trade the United Sta
now applies to steam-vessels, and thus make
lotage for all coastwise, lake, and river vessel
States. It would give us for the first time
efficient system of pilotage for all coastwise
has been tried for thirty-eight years as to ste
passengers and freight, and which has resulte
efficiency.

This bill if passed would affect the pilotage
as to coastwise sailing vessels, and as to the
Atlantic and Gulf States heretofore mentione
other twenty-eight States have relieved all c
obligation to pay fees to State pilots not used

In these ten States this bill would increase
and at the same time relieve coasting sail-vess
burden.

As it is now, in three of these

To substitute for this want of system as to coastwise sailing vessels the one uniform United States system that has been applied to steam-vessels so successfully for thirty-eight years, and which requires that such vessels shall each be piloted by its own master or mate who has been found competent and has been licensed for that purpose, or by a United States pilot in charge of the tug-boat towing such vessel, is to bring order out of chaos, and to increase the safeguards of life and property, as vessel owners and marine insurance companies testify has been the result where this system has been applied.

Fifth. It is urged that however much force there may be in the arguments in favor of the principle of this bill, yet Congress ought not to interfere, but each State should be left to take the step according to its judgment of its own needs.

The conclusive answer to this view is that pilotage is an instrumentality of commerce, and as such is placed by the Constitution exclusively under the control of Congress. No State laws regulating pilotage can be operative except with the consent of Congress. Years ago, before the General Government had improved harbors, established buoys and lights, and marked channels, and before commerce between the States had expanded to its present proportions, Congress adopted State pilotage laws as Federal laws until otherwise ordered, but in 1852 the inexpediency of so diverse laws regulating pilotage became so apparent, that Congress enacted a general law regulating pilotage as to steam-vessels in the coastwise, lake, and river trade.

Twenty-eight States, or such of them as have ports on the Great Lakes or ocean, have adopted the spirit of the national law as to coastwise and lake sailing vessels. Ten States still neglect to come into this national pilotage system. This bill is designed to remedy this neglect, and to put all the ports of every State of the Union under one uniform national pilotage system as to both sail and steam vessels in the coastwise, lake, and river trade. Congress has neglected its plain duty under the Constitution already too long, and it can not longer delay without doing grave injustice to its commerce and its merchant marine.

A bill similar to this was favorably reported from the House Shipping Committee of both the Forty-eighth and Forty-ninth Congresses, but was not reached for action.

We therefore recommend the passage of the accompanying bill as amended by the committee, as a measure of justice, safety, and wisdom.

O

STATE PILOTS.

February 18, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Cummings, from the Committee on Merchant Marine and Fisheries, submitted the following

VIEWS OF THE MINORITY:

[To accompany bill H. R. 1003.]

The undersigned, a minority of the members of the Committee on Merchant Marine and Fisheries, disagree decidedly with the majority of the committee in its decision to report favorably the bill (H. R. 1003) to exempt coastwise sailing vessels from compulsory pilotage under State laws.

In support of its action the minority submits the following argument made by Mr. R. C. Marshall, of Norfolk, Va., before the House Committee on Merchant Marine and Fisheries of the Fiftieth Congress, when the same bill was under consideration:

Mr. Chairman and gentlemen, the bill (H. R. 1494) now pending, we submit, should not become a law.

On the 21st instant Mr. Charles Lawrence, of Philadelphia, representing the American Ship-masters and Ship-owners' Association, appeared before you and presented the views of those desiring the passage of this bill. I was present and took notes thereof, and if I misstate anything that he then said I see him here to-day and respectfully ask him to correct me.

Mr. Lawrence said that—

First. Sailing vessels should have the same privileges as steam-vessels.

Second. Steam-tugs with United States pilots should be allowed to tow and pilot sailing vessels in and out of any ports of the United States, whether the said vessels had on board United States pilots or not.

To support the proposition laid down by him he said:

First. The pilotage costs more than the tug-boat charges, and cited the cities of Charleston, Savannah, Mobile, and Galveston.

We say pilots have uniform charges, fixed by the several State statutes, and take charge of and sail the vessels without any tug-boat or tow of any kind, unless the master of a vessel desires a tow, and the charge for said tow is then fixed in each case by the master of the vessel and the master of the tug; further, in bad weather no tugs can be seen or had along the South Atlantic coast, certainly not along the Virginia coast, when the pilots are always found ready to give such assistance to all vessels as may be needed or required, and if they did not they would not be sustained or maintained by the people of this Commonwealth.

Second. He cited the laws of Virginia, Maryland, and Georgia, authorizing licenses to be issued to sailing vessels engaged in the coastwise trade, and claimed it to be unjust, and requiring money to be paid without corresponding service.

We say this license law was passed at the instance and request of those engaged in the coastwise trade, ship-masters, ship-owners, and merchants, and not by the request or wish of the pilots. That these licenses cost infinitely less than the regular pilotage, and under the Virginia law exemplify it, to wit: In the coastwise trade the average would be—say a 300-ton vessel, drawing 13 feet of water, the regular pilotage would be $39 for coming in and $39 for going out for each trip made, for license for one year. She would pay $30 and make as many trips as possible, say ten or twelve a year. In other words, one year's license would cost about two-fifths of the regular

[illegible], are the only States that have abolis[illegible] vessels. The remaining twenty-one States never h[illegible] ish, most of them being inland States. This is our [illegible] tion. We desire to be corrected here and now if [illegible] pause for a reply. No contradiction being made, [illegible] the other side admit it to be true.

Fourth. He said the opposition claim that the p[illegible] infringement of State rights.

We say the oppositions, without denying the po[illegible] subject, maintain that the First Congress of the U[illegible] gravity and bearing of this subject, and declared a[illegible]

"SEC. 4. *And be it further enacted*, That all pilot[illegible] bors, and ports of the United States shall continue t[illegible] the existing laws of the States, respectively, wher[illegible] such laws as the States may respectively hereafter e[illegible] legislative provisions shall be made by Congress."

The courts here recognized that this is a subject k[illegible] lation; that it is likely to be best provided for no[illegible] adopted by the States respectively. The Supreme C[illegible] Cooley *vs.* Port-wardens of Philadelphia (12 Howard

"The act of 1789 contains a clear and authoritativ[illegible] gress that the nature of this subject (pilotage) is suc[illegible] it necessary to exert its power, it should be left to [illegible] that it is local and not national; that it is likely t[illegible] one system or plan of regulations, but by as many as [illegible] several States should deem applicable to the local p[illegible] their limits."

Congress has recognized the above to be true, fo[illegible] legislation has been had except in two instances, to [illegible] was passed:

"*Be it enacted by the Senate and House of Representati[illegible] in Congress assembled*, That it shall be lawful for the [illegible] sel coming into or going out of any port situated up[illegible] ary between two States to employ any pilot, duly [illegible] States bounded on the said waters, to pilot said vesse[illegible] usage, or custom to the contrary notwithstanding."

And in 1852, when the law creating United States [illegible] in the coastwise trade was passed, and in that (see se[illegible] cluding paragraph is as follows:

"Nothing in this title shall be construed to annul [illegible] lished by the laws of any State requiring vessels en[illegible] such State, other than coastwise steam-vessels, to tak[illegible] ized by the laws of such State, or of a State situate [illegible]

Now we submit that in view of the foregoing, in [illegible] pilot service extending from Boston to Galveston, in [illegible] the pilot systems of America challenge the admirati[illegible] fact that for one hundred years no [illegible]

Fifth. Mr. Lawrence says pilotage is a tax imposed by the States.

We say, suppose it is? It is lawful, and not paid by the ship-masters and ship-owners who are urging the passage of this bill, but previously by those who pay the freights on the cargoes and at last by the consumers, the people, who make no objection to the laws as enacted by the States, authorized by the General Government, and under which life and property have been wonderfully protected since the foundation of the Government.

Sixth. He says it is claimed that pilots are a necessity. We say, the civilized world say, pilot systems are necessities. The chambers of commerce and merchants of every port from Massachusetts to Texas say they are a necessity, and voluntarily tax themselves to sustain them.

Seventh. We say, the Government prohibits men-of-war from employing pilots, and cited a case at Philadelphia in which the admiral paid for a State pilot himself sooner than risk the vessel under his command without one. We say, his citation is a sufficient answer for us, but will add the same thing has been done by naval officers entering our ports, and the numberless instances of the running aground of Government vessels along our coast and in our harbor attest the unwisdom of such a law. We cite one instance that comes to our mind just now, the United States ship *Ossipee*, run ashore on Cape Henry a year or two ago; the cost to the Government resulting therefrom would have paid pilotage on Government vessels for years.

Eighth. Mr. Lawrence read the heading of a petition which he said was or would be signed by two thousand persons.

We ask, who are they? Where are they found? Are they from the States which have compulsory pilotage on coastwise vessels? They admit that they are ship-masters and ship-owners; there being but few ship-masters and ship-owners in these States which have compulsory pilotage, but few, if any, from those States have signed the petition. From Virginia he named but one, and he is John A. Curtis, of Richmond, Va., the owner of tug-boats and a ship-broker. Tug-boats would be able to charge without limit if the pilots did not exist to stand between them and masters of vessels.

Ninth. He says a pilot often makes more than the master of a ship; the pilot gets his money every time.

We say, the Commissioner of Navigation reports the coastwise trade to be in a prosperous condition. Mr. Lawrence, in his argument, said that new and larger vessels are being built and every law obnoxious to them has been removed except this one. Prosperous must mean in a healthy condition; money-making, building up. On some trips they may not make money, but on others they must make, or they would not be prosperous, prospering, money-making, building new and larger vessels; all obnoxious laws save this one removed, and though destroying a system built up by American citizens from and before the foundation of the Government, improved and perfected through years of toil, manly and courageous service and endurance, this tax, if you please, which they do not pay, must be removed, in order that those in this business may grow richer, and the pilot who barely makes a living for himself and family must seek pastures new and green. Show me a rich pilot, and I will show you a white crow for every one of them.

Having attempted to answer the points as made by Mr. Lawrence as briefly as I can, I shall endeavor to further show why the bill should not become a law.

Is a system of local pilotage necessary to the well-being of commerce?

The pilots have been regarded as necessary to commerce in all maritime countries from time immemorial; the courts of the civilized world have so regarded them. In *ex parte* McNeill (13 Wall., 238) Justice Swayne, for the court, said: "A pilot is as much the part of the commercial marine as the hull of the ship and the helm by which it is guided."

Under the laws of Virginia (and all the States with compulsory pilotage have similar laws) they must be trained. They serve an apprenticeship of five years and then they must be examined by a board consisting of masters of vessels and pilots; examined not in a general way about navigation, but examined minutely as to skill in handling vessels of different classes, both sail and steam, and as to courses, soundings, shoals, and set of currents or tides from sea to port for which he seeks a license or branch to pilot. If found skilled and fully qualified, a branch or license is granted him by the board; but if not, in any particular, he is sent back to the pilot-boat for further instructions, and there remains in service until he can pass his examination to the entire satisfaction of the board of pilot commissioners, and then he is required by law to attach himself to a pilot-boat and cruise therein at sea or he will not be entitled to the privileges of a State pilot. All fees are fixed by statute, and duties distinctly set forth as required by law. A violation of the law in any particular subjects him to a dishonorable discharge from the service.

The pilot laws of the several States will be found in the report of Commissioners of Navigation, 1885, Treasury Department Document, No. 756. The pilot law of Virginia will be found therein in full from page 98 to 103. The bill now being considered

...ly levied (in one case a charge of $1,000
sustained by the United States courts) impelled t
following year to enact the pilot law which is now
enactment was sought and secured by the merchan
the cause of repeal of the old compulsory law. Mu
men favoring the present bill upon the allegation
given to coastwise vessels money was received wit

The law requires that a pilot boat shall be cruis
and month out, year in and year out, at sea on a lin
be likewise cruising in Chesapeake Bay, from Fort
boat, and another in Hampton Roads, so that if a ve
be supplied. Watchful sentinels at all times, in al
best sea-boats can live, compelled by law and neve
sistance to *all* vessels seeking or requiring it, riding
without the reward of $1, periling and sometimes l
the performance of this duty; at all times at th
though licensed, and often in bad weather piloting th
restraint upon tug-boats and others from exorbitant c
vessels, because the State pilots' charges are fixed b
their crews are sick or their vessels disabled from an
ent safeguard to master, owner, and insurance compa
cers to the adjacent ports and life-saving stations to
If this is not full and complete service for the paltry
year then we can not comprehend sufficient recompen

Bill 1494 is an exact copy of bill 6390, reported at th
allege that if passed other than coastwise sailing ves
age. (See lines 10, 11, and 12, which read: "Or any
to the same owners in such ports, harbors, or water
sp ection district.") In 1884 a bill was presented re
compulsory pilotage; this did not pass. It appears t
guise. This identical bill was reported by a bare
year; but the patron (Mr. Dingley) of the bill now sa
tion, that it is intended to apply only to coastwise ve
but little difference whether it applies to coastwise o
sage will practically destroy the present pilot system

The minority, in further support of its action on
the minority accompanying a similar bill made to th

[House Report 838, part 2, Forty-ninth Cong

Mr. HAMMOND, from the Select Committee on Ship-B
ests, submitted the following as the views of the m
6390).

We, the undersigned, dissent from the report of the
Ship-Building and Ship-Owning Interests recommendi
6390) to abolish compulsory ...

by stable and well-defined channels. The entrance to others is intricate and tortuous, over bars shifting and to be known only by frequent soundings and constant vigilance. The entrance by the steam-boats once learned may be repeated at any reasonable interval in safety. The action of wind and waves upon the shifting bottom of the other in a single storm may cause death and destruction to a vessel and crew not protected by the knowledge acquired, and only acquirable, by the local pilots.

For these and other reasons the United States has wisely left pilotage in charge of the several States, and some of the States have left it to the municipal authorities at the ports. Since the foundation of our Government it was so until the act of 1852 exempted American steam-vessels from the law of compulsory pilotage. In granting that exemption to steam-vessels Congress was careful to declare that—

"Nothing in this title shall be construed to amend or affect any regulation established by the laws of any State requiring vessels entering or leaving a port in any such State, *other than coastwise steam-vessels*, to take a pilot duly licensed or authorized by such State or of a State situated upon the waters of such State." (U. S. Rev. Stat., 1873, sec. 4444.)

(4) That great commercial nation, Great Britain, has no uniform pilotage regulations. Her "merchant shipping act" of 1854, consolidating her statutes as to merchant shipping, left intact the widely differing local regulations in force at her several harbors. Liverpool, Dublin, Bristol, and the ports of the Upper Clyde have very stringent compulsory pilotage. At London, on the Thames, at the out-ports of the south coast and at Hull, there is a compulsory system modified by exemptions. The east coat north of Hull, Cork, Cardiff, Newport, and Gloucester, and some smaller ports, have not compulsory pilotage. These differences are based upon the comparative ease or difficulty of navigation in those ports. In that consolidating act uniformity, however desirable, was made to yield to the more important precaution of safety. Many of its sections were expressly made subject to alteration by the local pilot authorities within their respective jurisdictions.

Compulsory pilotage has for ages, and among all maritime nations, been enforced. It existed under Roman laws, in the Hanseatic ordinances of 1457, in the laws of Sweden as far back as A. D. 1500, in the code of Pays Bas in the reign of Louis XIV of France, and from the early history of England. Pilotage fees have been regulated by laws which protected vessels from exorbitant charges in stormy weather, while the same laws furnished pilots always ready to do service in all weather. Hence mutuality of obligation and efficient work by men of known skill. The Supreme Court of the United States well said:

"Compulsory pilotage laws rest upon the propriety of securing lives and property exposed to the perils of a dangerous navigation by taking on board a person peculiarly skilled to encounter or avoid them; upon the policy of discouraging the commanders of vessels from refusing to receive such persons on board at the proper times and places, and upon the expediency and even intrinsic justice of not suffering those who have incurred labor and expense and danger to place themselves in a position to render important service, generally necessary, to go unrewarded because the master of a particular vessel either rashly refused their proffered assistance or, contrary to general experience, does not need it." (Cooley *vs.* Port-wardens of Philadelphia, 12 Howard's R., 312.)

As the ship-owners here are now doing, the ship-owners in England attempted about two years ago to have Parliament abolish compulsory pilotage. Of that effort Capt. Bedford Pym, of the Royal Navy, said:

"Never, perhaps, has a more serious attempt been made than the present one, and the curious part of the business is that the greater the ignorance of marine affairs the more violent the onslaught."

And in the report of the wreck commissioners (Parl. Paper C 3909, of 1884) is the following:

"If the ship goes to sea in bad condition or badly found and equipped, it is the owner who saves the cost of the necessary repairs and equipments. If time is saved by undue speed and reckless navigation, it is the owner who saves the expense of a lengthened voyage and who earns a quicker return. If a ship is overladen and arrives safely at her destination he gets a higher freight. But if, unfortunately, in any of these cases, she is lost, with or without all hands, and she is fully insured (as often happens in such cases) he gets from the underwriters full compensation for his losses, and even more."

The Bristol Times and Mirror, speaking of that effort to abolish compulsory pilotage, said:

"It is a notorious fact that the number of wrecks occurring annually in the United Kingdom is very much smaller in those places on the coast where pilotage is compulsory than in those which are exempt from compulsion."

On July 8, 1885, Mr. Chamberlain, the author of the bill, withdrew the same and in a speech at Hull, a month later, he said he withdrew it because of the continuous

counter danger from her *vis inertia* or wind or wave
50 fathoms (or 300 yards) long. If the channel be
side of a shoal, trying to pull around it the sailing
tendency is to pull the vessel upon the shoal, and a
such disaster. In the elaborate report of the sele
British house of commons, in 1870, is this emphatic

"The strongest evidence has been given that stea
and that a pilot is as much needed with a steam-tu

(7) As a rule the inspectors are not familiar with
tricts, and yet, under this bill, can license pilots for
course they can not know their fitness for the work;
this bill for two years for sailing vessels, while on st
annually.

(8) Many maritime insurers object to the passage o
pulsory pilotage would increase the hazard of mari
for masters and crews, property and passengers mig
simony of ship-owners or the mistake or rashness of s

(9) This bill will destroy the efficiency of pilots.
must serve in the lower branches and prove himself
he can be a "full-branch" pilot. A "full-branch"
signated as "the blue ribbon of the ocean." But if
years and the study of the dangers and difficulties
naught, and licenses be granted as the bill proposes, t
and the service will deteriorate. It is no reply to s
that the exemption of steam-vessels did not produce s
generally belong to regular lines plying between th
masters are familiar, while sailing vessels are more fi
where in search of freight.

In ports where there is much foreign shipping th
keep up a body of skilled pilots, and compulsory pilot
not so in smaller ports, especially those of the South,
shipping. To maintain an efficient corps of pilots at
foreign vessels must be greatly increased or the pilots
exacted, not by law but by necessity, from vessels in
rious employment and pay would be bad for commer
age of those ports absolutely. Increased insurance, i
chants avoid such ports. Such ports would be practi

(10) We find no warrant for the remark in the repor
ure of other matters, Congress, at its first session u
that until further provision by that body pilots sha
State law." The inference sought to be forced that
been otherwise is answered by the fact that when
change. It is amusing that the report declares that
only by temporary permission of the national legisla
ception, the State laws have been in force for one hu
reason given by the Supreme Court of the United St

bris or ballast along their ocean paths. Without them selfish strangers may, to avoid quarantine, conceal and carry into harbors disease breeding wide-spread death. Pilots, though local, serve the country at large and especially when they police the water-gates to the country. All these duties they must perform by law. We had best let well enough alone.

All of which is respectfully submitted.

AMOS J. CUMMINGS.
GEO. W. FITHIAN.
ANDREW PRICE.
JOHN M. FARQUHAR.
H. G. EWART.
JOS. WHEELER.

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 39.

ADMISSION OF WYOMING INTO THE UNION.

FEBRUARY 15, 1890.—Recommitted to the Committee on Territories and ordered to be printed.

Mr. BAKER, from the Committee on the Territories, submitted the following

REPORT:

[To accompany bill H. R. 982.]

The Committee on the Territories, to whom was referred the bill (H. R. 982) entitled "A bill to provide for the admission of the State of Wyoming into the Union and for other purposes," together with the constitution made and adopted by the people of the said Territory for the State of Wyoming, with the memorial accompanying the same, and the memorial of the eleventh legislative assembly of the said Territory, praying for the admission of Wyoming as a State, having had the same under consideration, respectfully submit the following report, and recommend that the bill pass with amendments as stated in the bill as reported:

The Territory of Wyoming was organized in May, 1869, under the provisions of the act of Congress of July 25, 1868, entitled "An act to provide a temporary government for the Territory of Wyoming." With the exception of a small area in the southwestern corner taken from Utah and a strip along the western border cut off from the Territory of Idaho, all the area of Wyoming was carved from the Territory of Dakota. The country embraced in the boundaries of Wyoming, except a narrow strip on the southern border in the western half of the Territory, which was acquired from Mexico by the treaty of Guadalupe Hidalgo in 1848, was included in the Louisiana purchase of 1803.

The proposed State boundaries are the same as those of the Territory. The State will be bounded on the north by the State of Montana, on the east by the States of South Dakota and Nebraska, on the south by the State of Colorado and the Territory of Utah, and on the west by the Territories of Utah and Idaho.

The area of Wyoming, which equals that of Delaware, New Jersey, Kentucky, and New York combined, is 98,000 square miles, or 62,000,000 acres. Assuming that the boundaries of the State and Territories will remain as now constituted, Wyoming will make the eighth State in point of size. The States of Texas, California, Montana, Nevada, and Colorado, and the Territories of New Mexico and Arizona only exceeding it in area.

HISTORY OF THE STATE MOVEMENT.

The people of Wyoming ask for admission under most fortunate circumstances. The boundaries of the Territory are fixed. There are no land grants or claims growing out of the treaties with Mexico to be de-

opinion and judgment of the generatio
relieving the committee from the necessity
ing to the people for adoption conditions p
Territory as a State.

The tenth legislative assembly of the T
January, 1888, memorialized Congress (Ap
able the people of the Territory to form a c
mission of Wyoming as a State. Bills were
reported to the respective houses of the Fift
people of Wyoming to form a constitution a
Territory as a State, too late, however, to re

Encouraged by the friendly action of the
the boards of county commissioners of seven
adopting the following preambles and resolu
tioned the governor, chief-justice, and secret
cordance with the provisions of Senate bill 1
favorably reported in the Fiftieth Congress, t
stitutional convention.

RESOLUTIONS ADOPTED BY SEVERAL BOARDS OF

Whereas this board of county commissioners is sati
Senate bill No. 2445, as unanimously and favorably r
Senate by the Committee on Territories, that its provis
sections of the Territory of Wyoming; and

Whereas the board is satisfied that there should b
would be greater probability of success by literally an
visions of this bill: Therefore be it

Resolved, That this board pledges itself to put into op
under the laws of the Territory for the election of dele
vention, and the submission of such constitution as n
convention to the people of this county for ratification
chief-justice, and secretary of the Territory shall in th
initiatory steps under the provisions of said Senate bil
constitutional convention.

Resolved, That the chairman of this board be instru
resolution to the governor, chief-justice, and secretary,
counties of the Territory make similar requests they s
districts, apportion the number of delegates to the seve
do such other acts as may be necessary for the conveni
vention in manner and form as is provided by the

Fiftieth Congress, and of the boards of county commissioners and the governor, chief-justice, and secretary referred to, he says:

Now, therefore, recognizing the superior and material advantages of a State government over our Territorial system, and being desirous of carrying into effect the will of the people, I, Francis E. Warren, governor of the Territory of Wyoming, do issue this my proclamation to the people of the Territory, recommending that they take such action on their part as may be necessary to secure the admission of Wyoming into the Union of States; and for this purpose I direct that an election be held throughout the Territory on the second Monday of July, 1889, for the election of delegates to a constitutional convention to convene at Cheyenne, the capital of the Territory, at 12 o'clock noon of the first Monday of September, 1889, for the purpose of framing a constitution for the State of Wyoming, and for the purpose of submitting such constitution to the people thereof for their ratification or rejection.

I suggest that, in organizing a State government preparatory to admission, the provisions of the aforesaid Senate bill should be followed as nearly as may be possible, and in pursuance thereof the following recommendations are hereby made:

First. The number of delegates to such constitutional convention shall be fifty-five, apportioned among the several districts as hereinbefore set forth.

Second. The delegates apportioned to each district shall be elected exclusively in that district.

Third. Persons who are qualified by the laws of the Territory to vote for representatives to the legislative assembly thereof are hereby authorized to vote for and choose delegates to such constitutional convention.

Fourth. The qualifications for delegates to such constitutional convention shall be such as by the laws of the Territory persons are required to possess to be eligible to the legislative assembly thereof.

Fifth. Such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the Territory regulating elections therein for Delegate to Congress.

Sixth. Since the advantages to be obtained by statehood will depend somewhat upon the judicious action of the constitutional convention, it is desirable that the delegates should be representative men, of character and ability, whose work will be satisfactory to Congress and beneficial to the people of the proposed State of Wyoming. The character and fitness of the delegates to be chosen are in fact of greater importance than the manner of their selection, and if the citizens of any county generally prefer to elect their delegates by some equitable method other than that hereinbefore prescribed, it is believed that the delegates so chosen will be recognized and admitted to seats in the convention.

Seventh. The constitution formed by such convention shall be submitted to the people of the Territory for ratification or rejection on the first Tuesday in November, 1889.

In manner and form as prescribed by the governor's proclamation an election was held. The delegates elected convened and organized (every county being represented) on the 1st day of September, 1889.

The convention finished its work on the 30th day of the same month.

The constitution made by the convention was circulated, together with an address prepared by the committee of the convention, in every portion of the Territory. This was done through a large pamphlet edition and as a supplement of the leading newspapers published in the Territory. The constitution (see Appendix E) was submitted to the people on the 5th day of November, 1889. The election was held under the laws of the Territory, and the vote was canvassed as provided by the constitution. The total vote cast was 8,195, of which 6,272 was for the constitution. The small vote is satisfactorily explained by the memorial accompanying the constitution (Appendix F) and the argument of the Delegate, from which the committee make extracts as follows:

The constitution so framed was submitted as directed, according to the provisions of section 7 of article 21 thereof, and was ratified by nearly five-sixths of the citizens voting thereon, by a vote small in itself, and yet large in view of the little opposition felt by the people, and of the facts that no other issue was presented and that the day of the election followed one of the severest snow-storms ever known at that season and was also marked by extreme cold, rendering it practically impossible for for the people of many precincts to reach the polls.

test. I do not believe a constitution could be m
ratified by any people. I do not believe one per c
opposed to the admission of the Territory with th

From the foregoing it is apparent tha
their earnest desire for admission as a Sta
and with a strict observance of form and o
the Senate reported, bill of the Fiftieth Co
and have taken all the necessary steps to a

THE CONSTITUTI

The constitution adopted by the people
in form and makes no distinction in civil an
of sex, race, or color, and is not repugnant
United States and the principles of the Dec
The ordinances heretofore required by C
admission of a State irrevocable without
States, are a part of its provisions.

ORDINANCES.

The following articles shall be irrevocable without
and the people of this State:

SECTION 1. The State of Wyoming is an inseparabl
the Constitution of the United States is the supreme

SEC. 2. Perfect toleration of religious sentiment sh
of this State shall ever be molested in person or pr
mode of religious worship.

SEC. 3. The people inhabiting this State do agree a
claim all right and title to the unappropriated public
ries thereof, and to all lands lying within said limits
Indian tribes, and that until the title thereto shall
United States the same shall be and remain subject
States, and that said Indian lands shall remain und
control of the Congress of the United States; that t
the United States residing without this State shall
than the lands belonging to residents of this State; t
this State on lands or property therein belonging to
chased by the United States or reserved for its use.
preclude this State from taxing, as other lands are
by any Indian who has severed

The committee, after an examination of the constitution, are constrained to say that it is worthy of the encomium paid to it by the address of the committee of the constitutional convention, which in a few sentences concisely epitomizes the instrument:

The delegates in this convention came from both political parties from all sections of the Territory. It was non-partisan in character; indeed it may be truthfully said that in its deliberations there was at no time a division of its membership on party lines. Sectional questions were at no time considered, but to act for the common good of the whole people of Wyoming seemed to be the ruling motive. The material, industrial, and professional interests were represented in its membership, and no outside influences were permitted to affect their action.

The constitution adopted is believed to be fairly conservative and also progressive. It is the first constitution adopted by man which gives to each citizen the same rights guarantied to every other citizen. Under its provisions pure elections are practically guarantied, and economy of administration assured. Restrictions upon legislation and loose appropriations of public moneys are clear and positive. The salaries of officers have been fixed according to the value of the service rendered and in proportion to the means of the people to pay. Public trusts are carefully controlled and corporations restricted to a single line of business. The establishment of compulsory courts of arbitration to settle disputes between corporations and their employés, the protection of laborers in mines, the prohibition of the importation of foreign police to usurp local authority are all measures that commend themselves, and in the convention received the support of the representatives of both capital and labor. The extravagance in the management of county affairs that has prevailed in the past has been circumscribed and rendered impossible. The restrictions upon taxation and the creation of public debts are such as to necessitate economy in public affairs and insure to the people the highest excellence in government for the least money.

In the interest of local self-government, to promote the general good, and to encourage the future growth and development of the State of Wyoming, the constitutional convention having finished its work, respectfully solicits your candid consideration of the constitution herewith submitted and ratification of the same by your suffrages.

The constitution being appended to this report, the committee consider it only necessary to call attention to a few of its important provisions, and to add that it does not believe, if Wyoming should have twenty constitutional conventions, a better one would be framed for a new State.

The constitution provides for an economical government.

It creates no unnecessary or ornamental offices.

The upper and lower branches of the legislature are in the first instance composed of sixteen and thirty-three members respectively.

After the first session of the legislature, which may prolong its session to sixty days, the sessions are limited to forty days.

Special legislation of every character is prohibited.

The following safeguards express some of the limitations on the legislative powers of the State:

No bill for the appropriation of money, except for the expenses of the government, shall be introduced within five days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced.

No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members.

No bill, except general appropriation bills and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject is embraced in any act which is not expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No bill shall become a law except by a vote of a majority of all the members elected to each house, nor unless on its final passage the vote taken by ayes and noes and the names of those voting be entered on the journal.

No law shall be revised or amended or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended shall be re-enacted and published at length.

No bill shall be passed giving any extra compensation to any public officer, servant or employé, agent or contractor, after services are rendered or contract made.

All stationery, printing, paper, fuel, and lights used in the legislature and other departments of government shall be furnished, and the printing and binding of the laws, journals, and department reports and other printing and binding, and the repairing and furnishing of the halls and rooms used for the meeting of the legislature and its committees shall be performed under contract, to be given to the lowest responsible bidder below such maximum price, and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and state treasurer.

Except as otherwise provided in this constitution, no law shall extend the term of any public officer or increase or diminish his salary or emolument after his election or appointment; but this shall not be construed to forbid the legislature from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, if such salaries or emoluments are not fixed by its provisions.

All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in case of other bills.

SEC. 34. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive, and judicial departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Except for interest on public debt, money shall be paid out of the treasury only on appropriations made by the legislature, and in no case otherwise than upon warrant drawn by the proper officer in pursuance of law.

No appropriation shall be made for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of the State, nor to any denominational or sectarian institution or association.

The constitution clothes the governor with the usual powers vested in an executive. It authorizes him—

To remit fines and forfeitures, to grant reprieves, commutations, and *pardons after conviction*, but provides that the legislature may by law regulate the manner in which the remission of fines, pardons, commutations, and reprieves may be applied for.

The constitution gives the governor, in addition to the usual veto power, the authority—

To disapprove of any item or items or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items and part or parts disapproved shall be void unless enacted in the following manner: If the legislature be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

The constitution in addition to the usual State auditor creates the office of State examiner, whose duty is defined to be—

The legislature shall provide for a State examiner, who shall be appointed by the governor and confirmed by the senate. His duty shall be to examine the accounts of State treasurer, supreme courts clerks, district court clerks, and all county treasurers, and treasurers of such other public institutions as the law may require, and shall perform such other duties as the legislature may prescribe. He shall report at least once a year, and oftener if required, to such officers as are designated by the legislature. His compensation shall be fixed by law.

The constitution limits the number of the judges of the supreme court and district courts to the actual wants of the State.

On the subject of taxation the constitution is definite. It limits the indebtedness of the State and all municipal corporations of the State.

The power to create indebtedness in any one year in excess of the annual revenue must be authorized by a direct vote of the people, which limitation applies to the State, and to the counties, cities, and towns.

It prohibits the voting of aid or loaning of its credit, by the State or any subdivision thereof, to any railroad company or other corporation.

It abolishes the fee system except in a few limited cases.

The constitution protects the rights of the people against the infringement of corporations. We quote:

All powers and franchises of corporations are derived from the people and are granted by their agent, the government, for the public good and general welfare, and the right and duty of the State to control and regulate them for these purposes is hereby declared. The power, rights and privileges of any and all corporations may be forfeited by willful neglect or abuse thereof. The police power of the State is supreme over all corporations as well as individuals.

All existing charters, franchises, special or exclusive privileges under which an actual and bona fide organization shall not have taken place for the purpose for which formed, and which shall not have been maintained in good faith to the time of the adoption of this constitution shall thereafter have no validity.

No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employé waiving any right to recover damages for causing the death or injury of any employé shall be void.

No corporation organized under the laws of Wyoming Territory or any other jurisdiction than this State, shall be permitted to transact business in this State until it shall have accepted the constitution of this State and filed such acceptance in accordance with the laws thereof.

All corporations engaged in the transportation of persons, property, mineral oils, and mineral products, news or intelligence, including railroads, telegraphs, express companies, pipe lines and telephones, are declared to be common carriers.

There shall be no consolidation or combination of corporations of any kinds whatever to prevent competition, to control or influence productions or prices thereof, or in any manner to interfere with the public good and general welfare.

Ample provision is made for public schools for all the children of the State:

The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the State allow, and such other institutions as may be necessary.

The legislature shall make such further provision, by taxation or otherwise, as, with the income arising from the general school fund will create and maintain a thorough and efficient system of public schools, adequate to the proper instruction of all the youth of the State between the ages of six and twenty-one years free of charge; and in view of such provision so made the legislature shall require that every child of sufficient physical and mental ability shall attend a public school during the period between six and eighteen years for a time equivalent to three years, unless educated by other means.

In none of the public schools so established and maintained shall distinction or discrimination be made on account of sex, race, or color.

The constitution, after defining what shall constitute the school fund of the State, provides:

All funds belonging to the State for public school purposes, the interest and income of which only are to be used, shall be deemed trust funds in the care of the State, which shall keep them for the exclusive benefit of the public schools, and shall make good any losses that may in any manner occur, so that the same shall remain forever inviolate and undiminished. None of such funds shall ever be invested or loaned except on the bonds issued by school districts, or registered county bonds of the State, or State securities of this State or of the United States.

The income arising from the funds mentioned in the preceding section, together with all the rents of the unsold school lands and such other means as the legislature may provide, shall be exclusively applied to the support of free schools in every county in the State.

The people of Wyoming, as expressed by the constitution, have taken an advanced stand on the subject of suffrage. They, after a practice and experience of twenty years, have ingrafted into the fundamental law of the State the principle that there shall not be any discrimination on account of sex, so far as political rights are concerned. They have thrown every safeguard around the ballot, and have

declared that an elector shall be a citizen and, unless incapacitated by physical disability, shall be able to read the constitution of the State. The constitution does not deprive any one of the right to vote who had such right at the time of the adoption of the constitution. The important provisions of the suffrage clause of the constitution are as follows:

The rights of the citizens of the State of Wyoming to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall [illegible] political and religious rights and privileges.

Every citizen of the United States of the age of twenty-one years and upwards, who has resided in the State or Territory one year and in the county wherein such [illegible] shall be entitled to vote at [illegible] preceding any election, shall be entitled to vote at such election, except as herein otherwise provided.

No person shall be deemed a qualified elector of this State unless such person be a citizen of the United States.

[illegible] persons convicted of infamous crimes, unless restored to [illegible] shall not be entitled to the elective franchise.

No [illegible] shall be deemed to have lost his residence in the State by reason of his absence on business of the United States or of this State, or in the military or naval service of the United States.

No soldier, sailor, or marine in the Army or Navy of the United States shall be deemed a resident of this State by reason merely of his being stationed therein.

No [illegible] who shall not be able to read the constitution of this State [illegible] shall not apply to any person prevented by physical disability from complying with its requirements.

Nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution, unless disqualified by the provisions of section [illegible] of this article. After the expiration of five years from the time of the adoption of this constitution none but citizens of the United States shall have the right to vote.

All elections shall be by ballot. The legislature shall provide by law that the names of all candidates to be voted for at any election, shall be printed on the same ballot [illegible] and on election day to be delivered to the voters within the polling place by sworn public officials, and only such ballots so delivered shall be [illegible]. No voter shall be deprived of the privilege of writing upon the ballot the name of any other candidate. All votes shall be [illegible] in the registration of their ballots, and the secrecy of the ballot shall be [illegible] inviolate.

No person who fails to be an elector in the State of Wyoming shall be allowed to vote at any election or [illegible] be found in the State, until he or she shall have [illegible] as may be provided by law, unless the failure to register is caused by sickness or absence, or [illegible] shall be made by law. The legislature of the State shall [illegible] to carry into effect the provisions of this section. Which provisions shall be subject to amendment, but shall never be repealed. But this section shall not apply to the first election held under this constitution.

The committee considers it unnecessary to proceed further to discuss the constitution adopted by the people of Wyoming. That the people of Wyoming, following the precedents of the past, were justified and authorized to make the constitution for themselves can not be denied or even questioned. The [illegible] is well expressed in a recent report from the Senate Committee on the Territories, Senate Report No. [illegible], Fiftieth Congress, as follows:

[illegible] to the people of any Territory the right to assemble in popular convention, and to propose to Congress the adoption of such Territory as may thereupon form into the union as a State, [illegible] rights which we believe are guaranteed to the Constitution. So long as the [illegible] of the Constitution of the United States and of the existing Territorial [illegible] so long as the [illegible] State government [illegible] government, but awaits the [illegible] of Congress. The [illegible] and [illegible] of such are abundant [illegible] and [illegible] of danger [illegible] of a [illegible] of [illegible] in the [illegible] of [illegible]. She has made herself [illegible] and [illegible] to be admitted with the dignities and [illegible] of all American States.

The proceedings of the people of Wyoming in forming the constitution were not obnoxious to the principle as announced as is shown by section 23 of article 21 of the constitution, which is as follows:

SEC. 23. This convention does hereby declare on behalf of the people of the Territory of Wyoming, that this constitution has been prepared and submitted to the people of the Territory of Wyoming for their adoption or rejection, with no purpose of setting up or organizing a State government until such time as the Congress of the United States shall enact a law for the admission of the Territory of Wyoming as a State under its provisions.

Under the provisions of the Constitution of the United States which says "New States may be admitted by the Congress of the United States" no form of procedure has been adopted. Any law which might be enacted would not necessarily govern or control Congress in the future in the exercise of a power, derived from the Constitution of the United States, which leaves each case as it arises to the wise discretion and discrimination of the law-making branch of the Government. Some States have been admitted under enabling acts of Congress, while other States have been admitted on constitutions framed and ratified previous to the passage of any act of Congress bearing on the subject. Among the States admitted to the Union without authority of Congress to form State constitutions are Vermont, Kentucky, Tennessee, Maine, Michigan, Arkansas, Florida, Iowa, California, and Oregon. The same may be said of Wisconsin and Nebraska. The last two States failed to act under enabling acts which had been provided, and each on the motion of its own people formed a constitution, which constitutions were accepted and ratified by Congress. No established line of conduct has been followed. Kentucky became a State with a constitution that was never ratified by a vote of the people; Florida, with a constitution that had been made and adopted six years previous to its admission; California, with a constitution framed by a convention called into existence by the proclamation of a military governor; and Nebraska, with a constitution made by the legislature of the Territory of Nebraska.

Mr. Seward, in the discussion of the Territorial question in the Senate, forcibly stated the situation of Territories making application for admission when he said:

The Constitution of the United States does, in a great many cases, adopt that principle of generalization; that is, fixing certain rules and measurements, all of which must be conformed to before a great public transaction can be achieved; but it has always struck me that it was certainly a mark of wisdom in the framers of the Constitution that, in regard to the admission of new States into the Union, new members of the Confederacy, the Constitution avoided altogether everything like form, everything like particularity, and submitted the transaction always to the uncircumscribed discretion of the Congress of the United States.

Congress may admit a new State which has been organized by a compliance on the part of the people with certain prescribed forms set for them by the Congress of the United States, or on the compliance with certain customs which the other Territories seeking admission in the Union may have adopted; so, on the other hand, Congress may admit a new State, as it has on more than one occasion admitted a new State, which had complied with no forms, but which had proceeded at once to the matter of organizing itself without any preliminary application to Congress or any preliminary investigation of it by the people themselves. I think it is important that this should be kept up, that the question should always come before Congress in the case of every new State which is disembarrassed by form, disembarrassed by measurement, and disembarrassed by precedents.

That the people of Wyoming are anxious for admission under the constitution presented cannot be questioned, as the following facts will show:

The eleventh legislative assembly of the Territory of Wyoming, now in session, has unanimously memorialized Congress for admission under

Of the twenty-one members of the Territorial E
teen attended last evening's special session. Ever
resented.

The meeting was for the purpose of expressing
These resolutions were unanimously adopted:

"*Resolved*, That the Territorial Democratic cen
meeting assembled, does hereby declare its belief
racy of the Territory is strongly in favor of stateh

"*Resolved*, That this committee earnestly urges
gress to aid in the passage of the bill, now pending
admission of Wyoming as a State."

R. F. Glover was chairman and J. C. Baird secret

There were many expressions favorable to stateh

Judge Corn, W. H. Holliday, and others will go t
of Wyoming's Democracy and urge statehood.

Another meeting of the committee, to prepare cred
and to choose others, will be held this evening.

The resolutions above will be signed by all of t
other prominent Democrats.

The committee have been permitted to c
from a letter written by the Hon. W. H. E
in the above clipping, under date of Janu
Hon. J. M. Carey, the Delegate in Congress

I feel so deep an interest in the early admission
formation. On the 14th of January Governor Warre
sion of ten authorized by the constitutional conve
the early admission of Wyoming. What I have to s
make a sacrifice of the necessary time and money to
pose of doing anything that can be done to bring ab
ming. I do not want to give time and money for me
it best to advise with you as to when we should move
time away from business to be as short as possible.
statehood of Wyoming of such importance as to brin
development of the great resources of this Territory
a calamity if the admission should be indefinitely
that the people of Wyoming are practically a unit o

The Delegate stated to the committee that
inent business man, or tax-payer, or banki
operating a line of railroad in the Territor
the admission of Wyoming as a State under

be reclaimed, there are four or five millions of acres in the Territory that may be successfully cultivated without the aid of irrigation. The soil is a rich black loam, and is very productive where cultivated. In a very exhaustive report by the governor of the Territory to the Secretary of the Interior, he says:

Wyoming is rich in agricultural possibilities, and increased attention is being given farming in all its branches. In the valleys the soil is generally a black loam, in some places a red gypsum, and on the benches, plateaus, and slopes, a sandy loam usually rich and warm. A great portion of the Territory which looks bleak and barren is an alkali soil which produces abundantly after being reduced by the application of water, especially the sage brush and grease-wood wastes.

New agricultural districts are constantly being brought to public notice.

He says:

The tame grasses, alfalfa, clover, wheat, oats, barley, rye, corn, potatoes, roots generally, melons, and all garden vegetables, berries, small fruits, etc., are being successfully and very generally grown; immense crops of hay are gathered, and broomcorn, sorghum, and standard apples of excellent growth and quality have been grown and exhibited at our Territorial and county fairs. The vegetables and grains shown at these fairs are unsurpassed in yield per acre or in size.

Wyoming differs from nearly all its neighbors of the arid region in the fact that its settlement and development is not the result of mining excitements and discoveries. The chief occupation of her people have been, and is yet, the care and management of the grazing and farming interests. To this fact is due the surprising agricultural development which has taken place within the past decade. As it now stands Wyoming, although the youngest Territory in the Union, is third in the area of irrigated land and second in the number and mileage of its irrigation canals.

By the exhibition of maps and records of the irrigation ditches in Wyoming Territory and statistics prepared by the Territorial engineer, it was shown to the satisfaction of the committee that great progress had been made and was being made in the Territory of Wyoming in the development of the arid lands and bringing into cultivation a large area of country.

The following extracts from a report by Professor Meade, the Territorial geologist, show somewhat in detail that which has already been accomplished in this direction. It will be seen by this report that over $15,000,000 have been expended in the Territory in the reclamation of desert lands; that there are over 3,000 irrigation ditches, the total length, not counting laterals of nearly 5,000 miles, which cover nearly 2,500,000 acres of land. The engineer estimates that the area can be more than doubled by the construction of ditches without the aid of storage basins.

In the volume and distribution of her water supply, Wyoming takes the first place among the States and Territories of the arid belt. Within her boundaries are the sources of three of the great rivers of the continent—the Missouri, Colorado, and Columbia—streams crossing the continent in three directions and emptying into the Gulf of Mexico, Gulf of California, and the Pacific Ocean. These three great water courses have their origin within a circle of which the radius is less than 10 miles. Six hundred natural waterways have their water diverted in irrigation. Four great rivers cross her borders—the Platte on the east, the Big Horn on the north, the Snake on the west, and the Greene on the south. Their tributaries penetrate all parts of her vast extent and are fed from the melting snows of a mountain area which covers over 20,000,000 acres. There are over 3,000 irrigation ditches with a total length, not counting laterals, of nearly 5,000 miles. The record ditches cover 2,106,180 acres of land.

Wyoming stands third in extent of irrigated lands and in number and mileage of irrigation canals. More than $10,000,000 are invested in irrigation ditches and canals, and over $15,000,000 have reen expended in the reclamation of desert lands. The irrigated districts, as to extent, are equal to two-thirds of Italy, and are greater than that of France and Spain combined. The lands now reclaimed would, if divided, make 30,000 80-acre farms; and, if provided with transportation facilities, would furnish employment and support for more than one-quarter of a million of people. Fully 10,000,000 acres can be reclaimed by irrigation if proper measures are taken

for storing and distributing the water. These lands are not only enormously productive, but their agricultural value is enhanced by contiguity of over 30,000,000 acres of valuable grazing lands. The irrigable land of this Territory equals in extent the combined irrigation of Egypt and Italy, the agricultural area of which supports over 10,000,000 people. Taken in connection with the grazing land, its area and productive value are above the States in the Mississippi Valley.

* * * * * * *

The Territory still suffers from the lack of adequate railway facilities. There is a surplus of agricultural products in the north for which there is a ready market and good prices in the south; the completion of the railroads projected to bring these sections together will result in increased prosperity to both. It will encourage the cultivation of an increased acreage, and will make accessible to capitalists a country now practically unknown. In the counties of Johnson and Sheridan alone the surplus waters of the streams gauged this season would irrigate one-half million acres, and I am reliably informed that there is no doubt that extent of land is susceptible of being watered. Were it necessary, other illustrations of the same character could be given. It is certain, however, that agriculture is destined to be one of the most important as it is one of the most stable of the Territory's material interests.

The grazing fields of Wyoming are among the finest in the world. The herds of the Territory are large. It is the natural home of all kinds of live stock. The governor of the Territory, in his report to the Secretary of the Interior, estimates that there are now in the Territory 5,000 Angora goats; 175,000 horses; 250,000 sheep, and 1,500,000 neat cattle.

FORESTS AND LUMBER INTERESTS.

The forest area of the Territory of Wyoming is described by Mr. Robert C. Morris in a report compiled for the Bureau of Statistics of the Treasury of the United States, as follows:

The timber area of Wyoming has been variously estimated from 7,000,000 to 15,000,000 acres, a variation probably owing to the fact that the sparsely timbered land has been included in the larger estimate. A recent estimate of the forest area of Wyoming, based upon 12,060 square miles, divides as follows:

Counties.	Square miles.	Counties.	Square miles.
Laramie	80	Fremont	3,300
Albany	840	Crook	400
Carbon	1,360	Uinta	2,400
Sweetwater	40	Yellowstone National Park	1,340
Johnson	1,800		

The forests of Wyoming are confined mainly to the mountain ranges, between 4,500 and 10,000 feet above the sea-level. Some of them are of wide extent and the timber quite dense and heavy. The best timber is found in the southern part of the Big Horn Mountains, the central portion of the Laramie range, Medicine Bow, and Sierra Madre Mountains, and the northern spurs of the Uintah, which extend from Utah into southern Wyoming. The Shoshone, Teton, and Snake River ranges also bear quite heavy forests. The timber upon the eastern extension of the Sweetwater range and western portion of the Rattlesnake Mountains is light and scattered. The widest timbered area is in the northwestern part of the Territory, covering the Wind River, Shoshone, and other mountains of the main range, including the groups of Yellowstone Park.

There is considerable timber, mostly yellow pine, upon the Black Hills near the Dakota line. Measurements of the timber limits of various mountains have been made, which show the heights in their respective altitudes, above which coniferous trees—the hardiest of any species—will not grow. The timber line of Mount Washburn is 9,900 feet above sea-level, while the altitude of that mountain is 10,388; the timber line of Mount Hayden, of the Teton range, is 11,000 feet, while its altitude is 13,858 feet above the sea-level; the timber line of the Wood River range is 10,160, while its general altitude is 11,500 feet above the sea.

Yellow and white pine and white spruce are the principal timber. Many regard the yellow pine as the best and most useful tree, while others think the white spruce

furnishes the best timber for all purposes. Lodge-pole pine is the prevailing forest tree in a wide area along the mountain range north and south of Laramie. It is also common in the northwestern and other portions of the Territory. It often replaces the original growth after fires. These trees have an average growth from 8 to 12 inches in diameter, but are occasionally found 3 to 4 feet in diameter and 60 to 100 feet in height. Red cedar has a scattering growth along the foot-hills, and at lower elevation the streams are fringed with cottonwood, box-elder, willow, scrub-oak, and other small shrubbery.

The forest land of the Rocky Mountains is still largely owned by the General Government, and its preservation is of vital importance. The principal demands upon the forests are for the manufacture of lumber for local use and for railroad ties. Also large quantities of smaller timber are used for fencing and fuel. But little if any timber is exported. The consumption of railroad ties has been estimated at 500,000 per annum, and an equal amount is used for timbering the coal mines. The manufacture of charcoal in Uintah County was an important industry for use in the smelters of Utah and Montana until the discovery of coking coal in Colorado on the line of the Rio Grande railroad several years ago. The native lumber is similar to the Eastern spruce lumber, and is suitable for all ordinary purposes in building except as a finishing lumber.

MINING RESOURCES.

The Territory of Wyoming has become noted for its mining resources. Every report since those of Professor Hayden, of twenty years ago, have spoken of the minerals, especially the inexhaustible quantities of the base metals which have been discovered in the Territory.

The committee call attention to the report of Governor Warren, in which, speaking of the mining resources, he says:

The mining industries of Wyoming present perhaps the greatest possibilities of any of its resources. They comprise not only the precious metals, gold and silver, but inexhaustible quantities of coal, petroleum, iron, and soda. Copper, lead, tin, asbestus, mica, magnesium, sulphur, graphite, kaolin, fire-clay, glass-sand, and other valuable deposits exist, and many of them in large deposits. Building-stone is also abundant, including granite, marble, slate, sandstone, limestone, etc. There will be found attached to this report (in Part II) extracts from an interesting and valuable report by Mr. L. D. Ricketts, Territorial geologist, in which the mineral resources of Wyoming are more fully described. Mr. Ricketts has spent the summer in the field, and gives the result of his examination in certain localities. It is shown that the area underlaid with coal exceeds 30,000 square miles, or equal to double the coal area of the great State of Pennsylvania. More than 2,000,000 tons of coal are annually mined and the output is being constantly increased. The coal product already exceeds $5,000,000 annually.

The oil region extends over a country more than 300 miles in length, and in districts averaging 50 by 100 miles in extent. Two hundred thousand dollars are said to have been spent within the past year in developing the petroleum industry. A number of flowing wells have been plugged and only await better transportation facilities.

Gold quartz and placer mines are being profitably worked in several localities, and the mining of copper has also been found profitable; but, with the exception of coal, the mining industries can hardly be said to be developed. Wyoming is a great storehouse of mineral wealth, and it will not be many years before it will employ the highest skill of capital and labor.

AN EXPERT'S REPORT UPON THE MINERAL RESOURCES OF WYOMING.

Mr. F. A. Woodson, a former resident of Birmingham, Ala., after a careful investigation of the mineral and other natural resources of Wyoming, in the interest of a syndicate of Eastern capitalists and manufacturers, in making his report, says:

"No statements will be made in this report other than such as are the result of personal observation, or taken from official records. A careful examination of the Wyoming coal-fields gives abundant proof that the area of country to which is conceded and reported as being 12,000 square miles is not overestimated. Veins show a varying thickness of from 4 to 12 feet and of excellent quality. I have been informed that there are several veins cropping out near Twin Creeks, which average 100 feet thick. This did not come under my observation, and not knowing the authority, I can not indorse the statement. The supply, however, is practically inexhaustible, and I believe of as excellent quality as any Eastern coal. That this coal can be used in its raw state in the manufacture of pig-iron has been demonstrated by practical iron-

workers. These fuel deposits are particularly abundant along the North Platte River, below the mouth of the Sweetwater, and to the north along the eastern border of the oil belt.

"The iron deposits are, indeed, no less wonderful. I may say, without fear of contradiction, that in quantity they are without a rival, and in quality the ores are equal to that of the celebrated mines of Spain, and from which can be manufactured the finest Bessemer steel. Ores from which Scotch pig-iron can be made are also abundant. These deposits lay near the coal and can be mined and worked at a nominal cost.

"The petroleum fields of Wyoming are without doubt the most extensive yet discovered. Besides yielding an illuminating oil, a lubricator of as excellent a quality as any in use is a product of this new field. I feel confident that these deposits will prove of great importance to the West, and will in a few years rival the famous deposits of Pennsylvania and Ohio. The presence of natural gas, since its introduction as a fuel for manufacturing purposes, will be of great importance to this district.

"The soda deposits, covering hundreds of acres, are the largest and most important upon this continent, while the variety of other minerals can not be approached by comparison with any other locality. Marble, granite, building-stone, lead, salt, sulphur, gypsum, and fire-clay are abundant, and copper, gold, and silver mines are being successfully worked. The minerals lay near the heart of the Territory and upon a natural roadway across the continent, while tributaries of the Big Horn and Powder Rivers open avenues through a very fine agricultural country to the north."

Mr. Carey in his argument before the committee on the claims of Wyoming for statehood confirmed the report of Governor Warren on this subject, and said:

I believe, yes, I may say I know, the last four named products, coal, iron, soda, and oil, will make Wyoming one of the richest and most populous of the States.

The oil-bearing country extends over an area 300 miles long. The iron is found in great mountains, of that quality that may be easily smelted, much of which is of that character which is adapted to the manufacture of Bessemer steel. The great deposits and lakes of sulphate and carbonate of sodium are the most extensive found on the continent, and the coal area is known to cover 30,000 square miles that will produce different qualities of commercial coal. The production of her coal mines already reach an annual output of 2,000,000 of tons of the value at the door of the consumers of $13,000,000. Its distribution extends from the Missouri River to the Pacific Ocean. Through the production of Wyoming coal mines it has been made possible to profitably work the great Anaconda smelters in Montana. The production of the Wyoming cool at the dump is equivalent in value to 20,000,000 bushels of Dakota or Nebraska corn. It takes as many engines and cars to distribute the annual product of these coal mines as it would require to transport 70,000,000 bushels of grain.

This product is certain. The estimates do not depend upon mining experts. It represents a certain fixed annual increasing production and profit. These mines could not be worked out in 1,000 years, and are of more value to make States than all the bonanza mines of the precious minerals that have been discovered in the Rocky and Sierra Nevada Mountains. The three towns of Dana, Hana, and New Castle, with an aggregate population of 1,500, have sprung into existence within a few months. At these new towns mining machinery has been erected of sufficient capacity to mine and handle 3,000 tons of coal daily. These new openings will add at least a million of tons to the annual production.

These coal discoveries are of value beyond estimation to the States and Territories west of Wyoming to Nebraska, Kansas, and the Dakotas to the east. It is predicted that the annual coal output of Wyoming in less than ten years will amount to more than ten millions of tons.

From the foregoing statement and other information furnished to the committee, it is satisfied that there is in Wyoming that diversity of natural resources that insures stability and permanency of growth.

POPULATION.

There are various estimates placed upon the population of the Territory. Without a census perhaps the best way to determine the population of a Territory is by the vote cast. The committee is satisfied that Wyoming has sufficient population to entitle it to be admitted as a State. If comparisons are of value to determine this question there can be no doubt that the Territory has the necessary population. The

annexed table shows the population of ten of the great States at the dates of their admission into the Union:

State.	Population when admitted.	State.	Population when admitted.
Ohio	45,000	Missouri	66,000
Indiana	63,000	Oregon	45,000
Mississippi	35,000	Kansas	100,000
Illinois	35,000	Nebraska	100,000
Alabama	40,000	Colorado	100,000

The population of each was determined upon an estimate or imperfect census which shows an average population of a little above 60,000 for each State. The Governor of the Territory, in 1889, estimated the population of Wyoming at 105,000. Another governor estimated the population in 1888 at 85,000. The Delegate of the Territory on this subject says:

The growth of Wyoming has been steady, and without booms and immigration societies the Territory has steadily increased each year since organization in population and wealth. The vote has increased each two years from 20 to 28 per cent. The vote in 1888 was 18,210. The population can not be properly based on the vote. There is but little of politics in Wyoming. Every year is an off year. The vote this year will be 23,000 in round numbers. If State government is given the people it will be from 25,000 to 28,000—note my prediction. I believe the population of Wyoming is from 110,000 to 125,000. The population, as I have shown by the maps exhibited, is scattered over 100,000 square miles of territory. To get a full vote or a full census is an impossibility. Give the Territory State government and the population will double in five years, and in this respect follow the example of many of the States that have preceded her in admission into the Union.

It will be found on examination that there has not at any time been any retrogression or any falling off in the vote of Wyoming Territory. The increase has been certain each year since the organization of the Territory. The following table gives the votes cast at Presidential elections at various periods in the history of several of the States:

States.	Years after admission.	Votes cast.	Members of Congress.	States.	Years after admission.	Votes cast.	Members of Congress.
Tennessee	28	20,725	9	Louisiana	28	18,914	4
Indiana	8	15,725	3	Florida	3	4,963	1
Illinois	10	8,344	1	Do	7	7,193	1
Do	14	19,576	3	Do	15	14,345	1
Missouri	15	5,192	2	Texas	3	15,177	2
Do	19	19,332	2	Do	7	18,647	2
Mississippi	15	5,007	2	Iowa	3	24,303	2
Do	19	19,667	2	Wisconsin	.....	39,166	3
Arkansas	.....	3,638	1	Oregon	2	12,410	1
Do	4	11,209	1	Do	14	14,649	1
Do	12	16,888	1	Nebraska	2	15,168	1
Do	16	19,357	2	Do	6	26,141	1
Michigan	.....	11,360	1				

Wisconsin was admitted with three members of Congress; at the election preceding admission there were cast in the Territory 20,318 votes; at the first Congressional election subsequent to admission 24,600 votes. Iowa was admitted with two Representatives, who were elected by a total of 20,064 votes. Kansas, the second Congressional election after admission, cast 15,272 votes. Nebraska, at her first election for State officers for members of the legislature to elect United States Senators, cast 9,120 votes. Nebraska cast at first Congressional election

subsequent to admission 14,710 votes. Colorado cast at the election next previous to admission 17,100. California, at her first State election, after a most bitter political fight, when the selection of governor, judicial and other State officers, including United States Senators depended upon the result, cast 12,875 votes.

Oregon at her first election under her constitution, at which were selected all State officers and her legislature which selected United States Senators, cast 10,121 votes.

ACTUAL ASSESSABLE WEALTH OF WYOMING TERRITORY.

The property of the Territory was assessed in 1889 at $31,500,000, and this too with a reduction in the live-stock assessment of $5,000,000, in 1888–'89. The assessable property of the Territory in 1870 was $6,924,357; in 1880 it had increased to $11,257,344. The actual wealth of the Territory is believed to be not less than four times the assessable wealth, as shown by the following table:

	Actual value.	Assessed value.
The railroad property	$35,000,000	$6,163,000
Live-stock	40,000,000	9,000,000
Improved farms and ranches	15,000,000	3,000,000
Developed mines	15,000,000	Not assessed.
Churches and schools, county, city, and Territorial property	2,500,000	Do.
Irrigation works and improvements	10,000,000	Do.

The following table shows the amount of assessable and true wealth of several of the States at the date of admission or at periods subsequent thereto:

	Years after admission.	Actual wealth.	Assessable wealth.
Wisconsin	2	$42,000,000	*$31,200,000
Arkansas	14	39,000,000	23,400,000
Florida	5	23,000,000	13,800,000
Iowa	5	24,000,000	13,200,000
Oregon	2	19,000,000	11,400,000
Minnesota	2	52,294,000	32,087,730
California	.....	22,161,000	13,296,000
Kansas	.....	31,327,000	22,500,000
Wyoming, in 1889	.....	100,000,000	31,500,000

* Assessable wealth, except Kansas and Wyoming, estimated basis of 60 per cent. of actual wealth.

It will be seen that Wyoming is better prepared in this respect to become a State than either of the States here enumerated at the date of their admission. This table is compiled from the census returns of 1850 and subsequent years.

If the matter is pursued further it will be discovered that the wealth of Wyoming is in excess of either of ten States in 1850, of five in 1860, and of five in 1870.

The committee finds that the people of Wyoming have managed their affairs wisely and economically, and that few young States have laid better foundations for a great and prosperous commonwealth.

EDUCATIONAL MATTERS.

The Territory since the organization has maintained a compulsory school system, and has supported a school in every settlement where there has been a sufficient number of children of the school age to justify

it. In every city and town of any size good graded schools are maintained. In addition to this there is a university supported at public expense, offering a free higher education to the youth of the Territory. The Territory is well supplied with private schools. The governor of the Territory estimates the school property, exclusive of the lands, to be of the value of $1,000,000.

The Territory is annually expending nearly $250,000 for educational purposes. The people have raised during the last ten years for this purpose over $1,000,000.

PUBLIC BUILDINGS AND INSTITUTIONS.

These institutions characterize an enlightened and progressive people. They indicate that they are prepared for State government, and that Wyoming people are endowed with intelligence, public spirit, and the ability to manage their affairs in a most satisfactory manner, all of which is a guaranty that they will conduct a State government in such a manner as to be highly creditable to themselves and to the Union into which they are anxious to enter. On this subject the committee calls attention to the following facts taken from Governor Warren's report of 1889:

The capitol.—This building is now nearing completion, having been constructed at an expense of over $275,000. The capitol was designed by a competent architect, and is purely classic in style, bearing a resemblance in general outline to the Capitol at Washington. Its entire length and breadth, exclusive of the broad steps on three sides leading from the building, is 216 by 112 feet. The building is three and a half stories, and the height of the center and wings, from the ground to the roof, is 60 feet. From the central portion of the building rises a lofty dome, 153 feet in height and 30 feet in diameter at its base. At the main entrance is a projection or broad portico, surmounted by two groups of Corinthian columns, above which is a cornice and gable, treated with elaborate ornamentation. The principal material used in the construction of the capitol is a superior quality of sandstone. The new capitol is justly regarded as one of the finest public buildings in the West. It contains about sixty apartments, which afford ample accommodation for all departments of a State government.

University.—The Wyoming University, erected at a cost of over $100,000, is located at Laramie, and has been in successful operation for nearly two years. Besides being liberally endowed by the legislature by an annual appropriation of over $16,000, it has received a valuable land grant from the General Government. The university lands, as they are termed, have already been selected by a competent commissioner, and there will be found in this report a recommendation that the Department approve the renting of these lands, in order that the university can secure the benefit that may arise from the rental of the land. The university has an able faculty, and, like the public schools, provides a liberal education free to the youth of both sexes. The university building, which is one of the handsomest structures in the Territory, is constructed of stone. It is four stories in height, 157 feet in length, and 71 feet wide, and is heated by steam and lighted by electricity. The following is quoted from its prospectus:

"It is the purpose of the management to make its instruction so full and thorough in the different departments that students leaving at any point will be able to take the corresponding rank in any of the great universities of the country.

"Besides the collegiate preparatory department, a present necessity, but to be dispensed with so soon as the high schools of the Territory can be made to do its work, and the departments of the liberal arts, of letters, of philosophy, and of general science, each leading to its appropriate degree, and all of which are now in active operation, there are to be established in succession, and as early as practicable, several practical and professional schools, departments, and courses, designed to fit the student for the leading pursuits in life, especially a normal department, a school of mines, an agricultural department, a fully equipped commercial school (excellent work is already being done by an experienced professor in this department), and, finally, a preparatory school of law.

"The instructional force already numbers seven gentlemen doing regular professorial work, and several lecturers, who are under agreement to render services in certain departments, as they may be able, when occasion requires."

Fish hatchery.—The Wyoming fish hatchery is situated about 5 miles east of Laramie City, and is one of the most interesting places to visit in the vicinity. It is conveniently arranged and under excellent management, thousands of trout, salmon, whitefish, bass, and other varieties are hatched and annually distributed throughout the lakes and rivers of Wyoming.

While most of the streams and lakes of Wyoming had a natural supply of trout and other food-fish, there were others entirely devoid of fish of any description, and the success attending the stocking of streams containing native fish as well as the barren waters of the Territory has been very gratifying. Under the fostering care of the legislature the fish hatchery at Laramie has been enabled to accomplish the most satisfactory results. The Territory is under obligations to the United States Fish Commission for frequent donation of valuable varieties of fish. Over a half million fish have been annually distributed in the streams of Wyoming for a number of years, and many streams that were barren have been stocked and found well adapted to the raising of trout and other superior fish. Trout planted in 1885 have been caught the present year that weighed from 3 to 4 pounds, and measuring 20 inches in length.

The fish hatchery under the direction of the commissioner made a large and very interesting exhibit at the Territorial fair this season of fish grown in Wyoming streams that had been planted from the hatchery. The operations of the commissioner have been considerably curtailed on account of the withholding of Territorial appropriations for improvements that would double the capacity of the hatchery. The hatchery is on what is known as the abandoned Fort Sanders military reservation, 2 miles south of Laramie, and until title can be obtained to this land the Territory is unwilling to make further appropriations. Under the head of military reservations will be found a recommendation urging the opening of this reservation to settlement or sale.

Wyoming penitentiary.—The legislature of 1888 appropriated $30,000 toward the erection of a Territorial penitentiary at Rawlins, to cost $100,000 when completed. The building is now being constructed in a very substantial manner of iron and stone.

Poor-farms.—Provision was made by the legislature of 1888 for a Territorial institution for the poor, to cost not exceeding $25,000, and $5,000 of the amount was appropriated. A farm has been purchased at Lander, Wyo., but no building erected.

Deaf and dumb and blind.—An asylum for the education of the deaf and dumb and blind has been erected at Cheyenne at a cost of about $10,000. This institution has not yet been opened.

Insane asylum.—The Territorial hospital for the treatment of the insane, at Evanston, is a substantial structure of brick and stone, and will comfortably accommodate 50 patients. There has been expended on grounds and buildings about $75,000. A more extended account of this asylum is made under the head of "dependent and delinquent classes."

Value of Territorial public buildings.—Although Wyoming has a total indebtedness of but $320,000, her public buildings and grounds have cost about $500,000, and could not be duplicated for this amount. The grounds upon which they are located have increased in value, and the buildings have been honestly, intelligently, and economically constructed. In nine out of the ten organized counties in Wyoming courthouses and jails have been built of brick, iron, and stone. In Laramie County a very handsome hospital has been erected, and in all counties there are comfortable schoolhouses. In the cities and towns there are city halls, fire company and other municipal buildings of substantial character.

THE FINANCIAL CONDITION OF THE TERRITORY.

On this subject we call attention to the statement of the Delegate in an argument before the committee:

The indebtedness of the Territory is $320,000. The credit of the Territory is very high. Neither the Territory, nor any city, school district, or county therein has ever defaulted in the payment of any bond or interest at maturity.

No bonds of the Territory bear over 6 per cent. interest; none have been sold by the Territory for less than 5 per cent. above par, and some have been sold as high as 12 per cent. premium. They can not be bought in the market for less than $1.18. The Territory has never had a floating indebtedness. A warrant only floats during the time it takes to carry it from the office of the auditor to that of the treasurer.

On January 10, 1890, after every liability was paid, there was in the Territorial treasury $230,000. If a levy had been made of eight mills on the dollar on the 1st day of January on the actual wealth of the Territory, with the cash on hand, every obligation of the Territory and municipal corporation could have been redeemed,

leaving public property of the Territory and municipal corporations of the value of $2,500,000.

During the entire history of the Territory defalcations of Territorial officers have been unknown. Only two or three trifling defalcations have occured in the counties. The people of the Territory expend for the support of government, Territorial, county, and city, and for public schools, thirty times as much as the Government contributes for the support of government in the Territory.

BANKING INTEREST.

The banking interests of the Territory make a better showing than that of any State at date of admission, except States named in the omnibus act of the last Congress.

There are nine national and eleven private banks in Wyoming.

A recent report of the Comptroller of the Currency shows:

That no national bank has ever suspended or gone into liquidation in that Territory. Four private banks have failed only.

That the first institution under the national banking law was organized in 1871.

That there was not in banking capital in the Territory at that time $150,000.

That the total of the items of resources of the nine national banks of that Territory is now nearly $4,000,000.

Add to this total the items of resources of the private banks, and the aggregate is over $5,000,000. This is as much or in excess of the banking resources of either of four States, all of which have been in the Union for twenty-five years or more.

These States have, respectively, one, two, five, and seven Representatives in Congress.

This table shows the steady increase in each year in the banking resources and business of the Territory. It will be noticed that at no time has there been any retrogression:

Summary of national banks, the important items of resources and liabilities, and the totals, etc., Wyoming Territory.

Date.	No. of banks.	Loans and discounts.	U. S. bonds.	Cash and cash items.	Capital	Surplus.	Undivided profits.	Outstanding circulation.	Individual deposits.	Totals.
		Thousands.	*Thousands.*	*Thousands.*	*Thousands.*	*Thousands.*	*Thousands.*	*Thousands.*	*Thousands.*	*Thousands.*
1871	1	77	30	15	75	.....	3	27	55	161
1872	1	99	30	26	75	.....	5	27	81	188
1873	2	203	60	34	125	.....	23	51	162	363
1874	2	199	60	58	125	10	26	54	190	412
1875	2	246	60	62	125	16	49	49	297	539
1876	2	198	60	96	125	21	29	50	265	498
1877	2	303	60	89	125	25	62	52	311	580
1878	2	285	60	129	125	25	89	42	369	657
1879	2	385	60	79	125	50	58	53	444	753
1880	2	492	64	109	150	50	39	52	535	841
1881	3	730	94	201	225	50	48	83	856	1,306
1882	4	991	194	219	425	78	71	127	1,185	1,928
1883	4	1,313	219	242	425	103	95	123	1,604	2,436
1884	4	1,604	235	209	525	78	107	138	1,418	2,509
1885	5	1,861	155	309	800	140	152	140	1,714	3,067
1886	6	2,335	180	401	900	167	193	160	1,768	3,398
1887	8	2,527	224	305	1,075	210	180	201	1,697	3,568
1888	9	2,419	249	298	1,175	213	115	221	1,731	3,654
1889	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,726

THE POSTAL RECEIPTS IN WYOMING TERRITORY.

The postal receipts in Wyoming Territory in 1889 amounted to $70,235.12. There are 200 post offices, six of which are Presidential offices.

WYOMING MAKING RAPID STRIDES IN RAILROAD BUILDING.

There are over 900 miles of operated railroads in the Territory.

The principal railroad companies of the central west are locating lines and securing rights of way in Wyoming.

The Chicago and Burlington Railway Company operates a through line from Cheyenne, the capital of the Territory, to Chicago.

The Northwestern Railroad Company has built and is operating a line of road in the central portion of the Territory, connecting with its eastern system. This company has located from its present terminus a road to Ogden, Utah, which will make another through line to the Pacific.

The Cheyenne and Northern Railroad has completed 125 miles of road north from the capital of the Territory.

The Union Pacific Railroad traverses the Territory through its entire length from east to west.

The Union Pacific Railway Company built during the year 1889 a road to the newly-opened coal mines in Carbon County.

The Burlington system constructed last year a road from central Nebraska to the fields of coking coal in northeastern Wyoming. Additional railroad mileage is now under contract that will cost over $1,000,000. Even in the dead of winter engineers are in the field surveying and locating new lines. No less than four transcontinental lines are located across her borders. That Wyoming will soon double her railroad mileage there can be no doubt.

RELIGIOUS ORGANIZATIONS.

The various prominent religious organizations are making progress and gaining a foot-hold in the Territory. They have good structures in all the villages and towns. Among these are the Methodist, Episcopalian, Presbyterian, Congregational, Baptist, Lutheran, and Catholic.

There are thirty-two well conducted newspapers published in the Territory, four of which are daily and publish the Associated Press dispatches.

COUNTIES AND TOWNS.

The organized counties of Wyoming are, in most instances, well provided with substantial court-houses and jails and the cities and towns are well built and well governed. They are full of good homes and fine business blocks. Eight of these have good systems of water-works, and five are lighted with gas and electricity.

We make the following extracts from a report of Robert C. Morris, the United States Treasury expert, descriptive of two of the young cities of Wyoming.

Cheyenne.—Cheyenne has an extensive system of water-works, the latest and most approved sewerage system, fire department and fire-alarm system, telephone exchange, arc and incandescent electric-lighted streets and buildings, besides gas for general use; has a $50,000 opera house, $30,000 club house, fine business blocks, elegant private residences, eleven churches, four banks with a capital aggreating over $1,000,000 and average deposits of over $3,000,000, three daily and three weekly newspapers; the Territorial capitol, now nearly completed, $250,000. Among the other institutions of the place are three public-school buildings, valued at $100,000, and another authorized to be built at a cost of $20,000; a convent school, erected at a cost of over $50,000; a Territorial asylum for the deaf, dumb, and blind, $10,000; a county hospital, $35,000, and various municipal buildings.

* * * * * * *

The city is the supply point for an immense stock-raising and agricultural country, and its citizens are among the largest live-stock owners of the Territory. Fort Russell, 3 miles west of Cheyenne, has recently been enlarged by an expenditure of over $300,000, and is now a permanent military post, the largest and most important in the Department of the Platte.

* * * * * *

The growth of the city encouraged capitalists to invest in a street railway, extending over 5 miles of streets. An incident in the city's advancement during the year 1887 was the establishment of a free-delivery system. Cheyenne is probably the smallest city in the country that enjoys a system of free-delivery, but owing to the large amount of post-office business, amounting to nearly $20,000 per annum, the city was entitled to this privilege.

Strangersview with delight the miles of stone flagging and cement sidewalks that line almost every street of our city. The beauty of many of the streets and avenues is greatly enhanced by the bright, green turf on either side of the walk, which, together with long, straight lines of trees, forms an agreeable feature of the city's landscape. Nowhere can be found more delightful drives. Nature has provided roads equal to the smooth gravel roads of Central Park, New York. And right here it may be remarked that these natural roads have been an immense saving to the city. Many of the Eastern cities have been brought almost to the verge of bankruptcy by the enormous expense which a complete system of paving has involved. No such outlay will ever be required here, for nature has done the work. Cheyenne is famed for the elegance of its private residences and its many attractive cottages no less than for its magnificent business blocks and public buildings. The well-clipped lawns and shrubbery, with margin lawns between the streets and walks, give the city a park-like appearance, and take away the crowded effect that is usually presented in a large city. The people of Cheyenne have the opportunity of making it one of the most attractive places in which to live in America, and a noted resort for health and pleasure. The number of pretty lakes and broad, smooth boulevards and avenues afford every facility for adornment, which may be carried out on the most approved plans.

The water-works, which have been constructed at an outlay of $250,000, are owned by the city, and furnish an abundance of pure soft water to its citizens. In this connection it may be well to state that the city owns realty valued at $350,000, while its total liabilities do not exceed $150,000.

Laramie—Laramie City, the county seat and principal center of trade for Albany County and a large outlying district, was located in 1868, during the construction of the Union Pacific Railroad, and soon became on account of its many superior advantages an important railroad division. Extensive machine-shops were located here, employing several hundred men; and the development of other industries has given Laramie a stability that will always make it one of the important cities of Wyoming. The population of Laramie, which in 1880 was 2,696, may now be safely estimated at about 6,000. Laramie is on the main line of the Union Pacific Railway, 57 miles northwest of Cheyenne, and is the supply point for numerous ranchmen, lumbermen, and miners, besides the large railroad and manufacturing interest centered there. Between 1,000 and 1,200 men are employed in the various manufactures located at Laramie City. A statement of the wealth of Albany County is made elsewhere.

Laramie City, while possessing so many natural advantages, has also those artificial advantages which go so far to make it a desirable place of residence. Besides excellent public schools, it is the seat of the University of Wyoming, erected at a cost of over $100,000. This institution has been liberally endowed, and furnishes the highest standard of educational advantages. The city is supplied with daily and weekly newspapers, water and sewerage systems, a well-equipped fire department, electric light, telephone exchange, opera-house, six churches, and the various fraternal societies. The Wyoming fish hatchery is located 4 miles east of the city, and the United States penitentiary is a short distance outside of the city limits. Surrounded by snow-capped mountains and picturesque hills, which add so much to the beauty of Laramie, it is not inappropriately called the "Gem City of the Rocky Mountains." The pride of Laramie, however, is in her manufacturing establishments. Here are located large rolling-mills for the manufacture of iron rails, spikes, etc., railroad repair shops, chemical works for the manufacture of salt cake, caustic soda from the sulphate of soda, glass works, flouring mill, soap works, tannery, planing-mill, and numerous smaller enterprises.

The Union Pacific Rolling-Mills for the manufacture of rails, etc., were erected in 1872, at a cost of over $250,000, and employ the labor of about 200 men. During the year ending May 31, 1880, there were employed in the production of iron at the rolling-mills in Laramie City 148 persons, who were paid wages amounting to $79,650. The value of material used was $403,568, and the product of the mills was 9,790 tons of iron. The number of tons produced in 1888 was nearly double that produced in 1880. The census of 1880 gives a total of 57 manufacturing establishments in Wyoming, employing $364,642 capital and 380 persons.

The Union Pacific repair shops, located in 1868, employ on an average over 100 men.

The Laramie Chemical Works, located about a mile north of the city of Laramie, are also the property of the Union Pacific Railway Company, and were erected at a cost of over $100,000. About 50 men are employed when the works are in full operation. The crude soda which is found about 13 miles west of Laramie is converted into marketable products, caustic soda, salt-cake, soda-ash, and concentrated lye.

These remarkable deposits occur in a basin comprising some 200 acres in extent and are known as the Soda Lakes. They are fed by springs from which flows a strong solution of soda. In the spring and summer these springs cover the soda deposits with this soda solution, but as the season advances the water evaporates and the soda is deposited in the form of pure crystals of sulphate of soda until in the fall the deposits are hard and dry and the soda can be easily removed. This process goes on continually, so that new material is constantly being added to the deposits, which are thus rendered practically inexhaustible. The amount of soda in the lakes is roughly estimated at 52,000,000 tons. This sulphate of soda is brought to the works, and there, by the Leblance process somewhat modified, is converted into the various merchantable products of soda. Other soda deposits have been found in the Territory, which are referred to in the special article on soda.

The Union Pacific in 1886 invested $40,000 in the construction of burnettizing works for the treatment of railroad ties, by which it is claimed their durability and usefulness are vastly increased. This zinc-tanning process is only carried on in two other places in the country.

The Laramie Glass Company was inaugurated on the 6th of April, 1887. The works include a substantial stone building 210 feet long by 70 feet wide, divided by stone fire-proof partitions into three departments, viz, the pot room and mixing department on the south, the furnace room in the center, and the flattening and cutting rooms on the north. The capital of the company is $75,000. This is the only window-glass factory west of Rock Island, Ill., there being none on the Pacific coast, so there is a wide market for the product of the factory. The factory when in operation employs about 50 men, and has a capacity for producing $150,000 worth of glass per annum. Among the improvements contemplated at Laramie are the enlargement of the present works and the erection of a bottle factory.

The Laramie Flouring Mill was erected in 1887 at a cost of $25,000, and has a capacity for producing 80 to 100 barrels of flour per day.

The committee believe it is to the interest of the United States to admit the Territories as States at the earliest possible moment. This has been the policy of the Government from its very commencement. While it was provided under the provisions of the ordinance of 1787 that whenever either of the States to be formed from the Northwestern territory should have 60,000 inhabitants, it should be admitted into the confederacy of States, the facts show that only one of the five great States formed from that territory had the population required by the ordinance at the date of its admission. The United States can not have any object in holding any portion of the territory of the United States in a condition where it must be governed by an influence largely outside of the territory itself. A Territorial government in a growing community like Wyoming is a great burden to the people. It is an embargo to their growth; emigration and capital avoid a country in a Territorial condition.

The rule was laid down by the Supreme Court of the United States when it declared—

> There is certainly no power given by the Constitution of the Federal Government to establish and maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure, nor to enlarge its territorial limits in any way except by the admission of new States. * * *
>
> The power to extend the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the Government it has been held to authorize the acquisition of territory not fit for admission at the time, but to be admitted as soon as its population and situation entitled it to admission. It is acquired to become a State and not be held as a colony and governed by Congress with absolute authority.

Congress has been in some instances tardy in the exercise of its discretion for the reason that the admission of a new State has too often been made a political question. The committee does not believe that the admission of a new State should be delayed for one moment, when the people residing therein with comparative unanimity ask for admission and make such a showing of population and wealth as to justify the belief that the State, if admitted, will become an important one of

the American Union. The Territories are for the most part settled by young, active, and progressive people who have gone from the older States to make homes in a new country. Especially is this the case in Wyoming, as the people of that Territory are perhaps as distinctively American as that of any one of the States of the Union.

The education of the American people, from the very first colonial settlement on this continent, has made the provincial system obnoxious to their sense of fair play and justice. They believe in local government and in all the powers of government being derived from the consent of the governed. While in the first instance it may be necessary in the government of a people in a Territory for the President to appoint governors and judges to execute and administer the laws, the history and the statutes of the United States show that it has been the earnest desire to give the people of a Territory State government as soon as such people were satisfied of their ability, and expressed a desire to take upon themselves the duties and responsibilities of a State. The number of people in a Territory at the date of admission has had but little influence in the matter. The larger States have not opposed the admission of the Territories as States. Mr. Seward, representing the most populous and wealthy State in the Union in the Senate, said:

I rise to protest against my vote here in favor of the admission of the State of Oregon under the circumstances in which she comes here, being given upon the condition of a pledge or the assurance that under other circumstances and at another time and in regard to other States, I shall vote because an analogy is established between that State and the present one. I can conceive, as I said on this question a few days ago, of a State with a million of people that I would not consent to admit into the Union, and I can conceive of a State I would admit with a population of 40,000 or 50,000 or 60,000.

She (Oregon) is to be admitted some time, and, inasmuch as she is to be admitted, it is only a question of time whether you will admit her here to-day, or admit her six months hence or seven years hence. What objection is there to her being admitted now? You say she has not 100,000 people. What of that? She will have 100,000 in a very short time.

* * * * * * *

Now what earthly difference can it make to this Republic collectively, these States collectively, or to one State in the Union, whether Oregon is admitted now or admitted next December. The State of Oregon is here of her own free will—is here ready to be admitted. I think there is nobody who doubts that the people are ready, desirous, willing to come in. They have made a constitution which is acceptable to themselves; a constitution which, however, may be criticised here after all complies substantially with every requirement which the Congress of the United States or any considerable portion of either house of Congress has ever insisted on in regard to any State. For one, sir, I think that the sooner a Territory emerges from its "provincial condition" the better; the sooner the people are left to manage their own affairs and are admited to participation in the responsibilities of this Government the stronger and more vigorous the States which those people form will be.

Subsequent to this, in a debate on the admission of Nebraska as a State, Mr. Sherman, one of the able statesmen of our time expressed the same opinion when he said:

It is sometimes said that these new States have too much preponderance in the legislative power of the Government. It is thought that if they have not sufficient population for one member, it gives them an undue advantage in the House of Representatives, and that with a small population that they ought not to be admitted into this Senate on an equal footing with the great States of New York, Ohio, Pennsylvania, Massachussetts and other States. Perhaps that is so, but in the practice of our Government there never has been any difference of interest between the small and the larger States. These Western States will be governed by the same impulses and the same feelings that govern us. I never yet have seen the line of distinction drawn between the small and the large States. There has been no question presented since I have been a member of this body which divided the large from the small States. There is no danger therefore of an undue representation. These small States are increasing rapidly in population. I have no doubt that in a very short time Nebraska will contain more population than several of the

existing States. By the time the next census is taken this young State, admitted I hope by your action, will have passed in the race of population and great progress many of the old States of the Union. It requires but very little time for the American people to fill up one of these new Territories. We must not treat them as if their rights were any different from ours.

The views thus expressed were only a reaffirmance of those that had been expressed from the very foundation of the Government on this subject. Mr. Madison said, in a debate on the admission of Tennessee, that—

The inhabitants in that district were in a degraded situation; at present they were deprived of a right essential to freemen—the right of being represented in Congress. Laws were made without their consent, or by their consent in part only. An exterior authority appointed their executive, which was not analogous to the other parts of the United States and not justified by anything but an obvious and imperious necessity.

Sixty years afterwards in the United States Senate, Mr. Collamer said

The Territorial condition is not one which it is desirable to extend. It is an unnatural condition in our Government—that people have never yet had the advantage of choosing their own government, their own executive, or having their own judiciary. * * *

They desire to be enabled some time or other, and they consider this the proper time, having the population, to have the privilege of governing themselves in this country as other people do.

Following the policy laid down by President Polk, President Taylor declared:

I did not hesitate to express to the people of these Territories (acquired from Mexico) my desire that each Territory should, if prepared to comply with the requirements of the Constitution of the United States, form a plan of a State constitution and submit the same to Congress with a prayer for admission into the Union of States.

Mr. Buchanan, as Secretary of State, laid down the rule for the admission of new States, that should govern Congress, as follows:

Congress are the sole judges of the proper time because they and they alone under the Constitution have power to admit new States into the Union. That they will always exercise the power as soon as the condition of the inhabitants of any acquired territory may render it proper can not be doubted. * * * Besides, Congress will never turn a deaf ear to a people anxious to enjoy the privileges of self-government. Their desire to become one of the States of the Union will be granted the moment it can be done with safety.

Mr. Dawes, in the House of Representatives in the Oregon discussion, made use of the following language:

So far as the amount of population is concerned, and so far as we have any official information, there are in my opinion very few more than 50,000 or 60,000 inhabitants in that Territory. I would as soon vote for her admission into this Union with 60,000 as with any other number if the circumstances which surround her Territorial existence and position are such as to justify it. I make no objection here that she does not come under the enabling act. Other things being equal, I would just as soon vote for her admission here without as with an enabling act, if she came here with a constitution acceptable to her people and republican in principle.

Mr. Douglass, when the question of the admission of the State of Kansas was before the people, said:

I helped to admit Florida into the Union when she had a population of 48,000.

* * * * * * *

I suppose two-thirds of the States of the Union have been admitted with less population than Kansas now has. I doubt whether more than two or three ever had as much. Ohio had nothing like it—probably not more than half. Indiana had about half, Illinois about half, Mississippi, Arkansas, Missouri, Alabama, and Louisiana about half. While I think it is not right to admit new States with too small a population—30,000 or 40,000 or 50,000—yet it has ever been done, and certainly, if the objection was not well taken to a population of 40,000 or 50,000, it is not an insuperable objection when there are 109,000. Under these circumstances I think we had better waive these small technical objections and treat this question on its merits.

One of the ablest men produced by our institutions, Mr. Fessenden, in the Oregon and Kansas debates, took the ground that the required number of population for the admission of a Territory as a State was not fixed by the Constitution or laws of the United States, and the want of any fixed number was not an insuperable objection to the admission of a State, and said "he did not choose to commit himself to require any particular number."

Mr. Benjamin, of Louisiana, gave expression to the same opinion when he said "that the want of the number fixed for a Representative would not debar him from voting for the admission of a new State."

Senator Polk, of Missouri, made use of a similar expression and indicated that if a population is settled, industrious, and well to do in all respects, the want of a sufficient number for a Representative would not debar him from voting for the admission of the new State. Mr. Stephens, of Georgia, held the same views as those expressed. When the bill was before Congress for the admission of Colorado as a State, Senator Howe, of Wisconsin, made use of the following words:

We have no general law which determines when our children, the children of the Republic, shall become of age and shall have the right to set up for themselves. We have been in the habit of fixing that time as each individual child came forward to claim it. Another child is here to-day asking to be emancipated from parental authority, so to speak, of the United States; willing still to be a child, but wanting, like other emancipated children, the right to guide herself.

I have but one test by which to judge for myself when this thing we call a State ought to be admitted or not. Whenever I find a community friendly to the United States and able to pay the expenses of their own government, defray the charges of their own control, if they say they are willing to do it, I am not the man to forbid them. If my own judgment is not quite in accord with theirs, if I find a pretty spirited and a pretty plucky people saying that they are equal to the work of self-government, when I am not quite satisfied of the fact myself, I rather yield my own opinion to theirs. I would rather encourage a little ambition of this kind than discourage it.

That a new country should be fully represented in both branches of Congress can not be doubted. Since in the United States rests the primary disposal of the soil in the Territories much legislation is needed in a new country that is not required in the older States. Mr. Douglas very forcibly gave expression on this subject when he said:

I have seen Oregon and Washington Territories suffer in their interests because of the want of representation here, and it was not in my power to prevent it. California has had vigilant Senators here looking after her interests, and drawing everything that the Government could control into California, when, if there had been representation of the whole coast, we would have heard oftener of the Columbia River and Puget Sound when you came to the distribution of the patronage of this Government or the distribution of money for public works and to develop the country.

The committee have no hesitation in saying that they are satisfied that if Wyoming can be admitted now that its population will entitle the new State to a Representative in the popular branch of Congress. The Constitution does not prohibit the admission of a State in advance of this time, but simply requires that each State of the Union shall have two Senators and at least one Representative. The committee desire to call attention to the remarks by the Delegate of the Territory in Congress before the committee on this subject:

As I have said on another occasion, equal representation as a theory is good enough; in practice it is an impossibility. There are Congressional districts represented in the House by one member that under the present basis of apportionment are entitled to three and perhaps four Representatives. Men are sent to Congress to represent ideas and questions of public policy. The influence of a State in the national legislature depends not so much upon the number of its delegation as upon the character, integrity, and ability of its representatives. As a rule the new States are the ones that do not have their full representation. Whatever deficiency there may

be in population at the date of admission of a State, is more than compensated for before the second decade in the State's history has passed.

The admission of Kansas, Nebraska, and Colorado, each in turn were opposed for the want of sufficient population to entitle them to a Representative. Note the fact that a Congressional district of Nebraska bordering on the eastern boundary of Wyoming, represented by a worthy member of this committee (Mr. Dorsey), cast in 1888 nearly 78,000 votes, more votes than Nebraska had population at the date of her admission. Judge Peters, of Kansas, represents probably as many voters as Kansas had population when admitted. But the most marked case is Wyoming's neighbor on the south, Colorado. Loud protests were made against her admission for the want of sufficient population, yet there were 92,000 votes cast for her one Representative at the last election. Unless an apportionment is made before the next Congressional election, I have no doubt the smallest of these three districts will cast at least 100,000 votes.

Open the doors to Wyoming's natural wealth by removing the embargo of Territorial government and she will repeat what the surrounding districts in the adjoining States have done, and her one Representative at the taking of the census in 1900 will in all probability represent 100,000 voters. The admission of Washington and Montana as States has turned an unprecedented immigration to the Northwest. Population and capital seek new States.

If the Congress of the United States would do the best possible thing for the people of the Territories it would admit them as States, removing them from their condition of Territorial dependence at the earliest possible moment. All who are familiar with the facts know too well it would have been far better for the Dakotas if they could have been admitted as States ten years ago. Washington and Montana should have been permitted to come into the Union under the constitutions which they presented in 1885. Much of the trouble that now exists in the Dakotas would have been avoided if the people of the Territory of Dakota had been admitted as a State or States in 1880. The rapid growth of population and wealth, the appointment of officers at the seat of Government to influence and control the political destinies of the future States resulted in the greatest kind of wrongs to that people.

The bill that the committee has had under consideration is in the form that has usually been adopted in the admission of States that have presented themselves with a constitution. It makes the usual land grants and donates the usual percentage of the proceeds that may be derived from the sale of public lands in the State subsequent to admission.

For the reasons set forth the committee recommend that the bill with the amendments stated do pass.

APPENDIX A.—MEMORIAL FOR STATE GOVERNMENT.

[Introduced February 7, 1888.]

Resolved by the council and house of representatives of the tenth legislative assembly of the Territory of Wyoming; to memorialize the Congress of the United States of America, as follows:

MEMORIAL.

The tenth legislative assembly of the Territory of Wyoming, in session assembled, respectfully represents to the Congress of the United States of America the following:

The organic act of the Territory was approved on the 25th day of July, 1868; the organization was completed on the 19th day of May, 1869; as organized, the Territory has existed for nearly nineteen years.

Its coal fields are numerous and extensive, have been much worked, and are seemingly exhaustless; its iron, soda, and oil fields are extensive and rich, and are seemingly exhaustless; its native grasses are various, abundant, and highly nutritious; contrary to former impression, its capacity for vegetable culture is very remarkable, aided by irrigation.

An extensive system of skilled irrigation has been established, is rapidly increasing, and admits of large and indefinite expansion.

In his report to the Secretary of the Interior for 1885, the then governor (Warren) stated the number of live-stock in the Territory, consisting of horned cattle, sheep, horses, and mules, at 3,100,000 head; and their valuation at $75,000,000; and in his report to the Secretary for 1886, the number as increased, and the value as exceeding $75,000,000; the two years were periods of exceptional market depression in live-stock values, the last much more than the first.

The long, extensive, and accurate experience of that governor with the subject, and his sound and practical judgment entitle his statements to especial respect.

The report to the Secretary for 1887 by the present governor (Moonlight) does not state the number or valuation for that year; but it shows that improved methods in the raising of horned cattle are in promising progress; and that horse and sheep cultures have become extensive, are rapidly increasing, are conducted with superior intelligence, and represent large investments and fine breeds. The unmistakable ability and intelligence evinced by the report render it worthy of full confidence.

It is plain to ordinary observation that nature intends Wyoming for a great railway area of the west division of the continent and a great railroad highway for transcontinental traffic. The Union Pacific Railway traverses the southern belt of the Territory; another trunk Pacific railway has been completed partially across the Territory; and the construction of a third has nearly reached its eastern boundary.

These lines finished, lateralization will follow according to the inevitable law of trunk-line developement. Other and important railroads are also operating, and ordinary observation can easily foresee that within the next fourth of a century the Territory will be gridironed over by a complete railway system.

A free public and compulsory system of education is well advanced here.

The above data are moderately stated, and prepare the mind to accept the estimate of the present population of the Territory, which is stated in the governor's report for 1887 at 85,000.

This assembly confidently accepts the report as correct on the subject.

It is manifest that the prosperity and welfare of the people of this Territory will advance, under State institutions, far beyond what can be realized in a Territorial condition.

This legislature respectfully requests of Congress such legislation as will enable the people of the Territory to form a constitution and a State government, and for the admission of such State into the Union of the United States of America on an equal footing with the original States thereof; and that such legislation may embrace ample and gratuitous grants to such State government by the Federal Government of the lands of the latter, lying within the Territory, for the support of common schools, for the erection at the capital of the State of public buildings for judicial and legislative purposes, or to promote the construction of such buildings; also for the erection of a penitentiary or State prison, the donated lands and the proceeds thereof to be employed as the legislature of such State government may direct, in respect to the support and conduct of schools, and the erection or construction of such judicial, legislative, and penitentiary buildings, and that such legislation may further provide that a proper per centum of the proceeds of the sales of all public lands lying within said state, which shall be sold by the United States, subsequent to the admission of said State into the Union, after deducting

all expenses incident to the same, shall be donated and paid to the said State for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land in the State, as its legislature shall direct.

Resolved, That a duly authenticated copy of the foregoing resolution be transmitted to the governor of the Territory, and that he stand requested to take proper steps to obtain from Congress the above desired legislation.

L. D. PEASE,
Speaker of the House of Representatives.
JOHN A. RINER,
President of the Council.

APPENDIX B.—RESOLUTIONS ADOPTED BY SEVERAL BOARDS OF COUNTY COMMISSIONERS.

Whereas this board of county commissioners is satisfied, from an examination of Senate bill No. 2445, as unanimously and favorably reported to the United States Senate by the Committee on Territories, that its provisions are absolutely fair for all sections of the Territory of Wyoming; and

Whereas the board is satisfied that there should be immediate action, as there would be greater probability of success by literally and speedily following the provisions of this bill: Therefore, be it

Resolved, That this board pledges itself to put into operation the election machinery under the laws of the Territory, for the election of delegates to a constitutional convention, and the submission of such constitution as may be presented by the said convention to the people of this county for ratification or rejection, if the governor, chief-justice, and secretary of the Territory shall, in their wisdom, see fit to take the initiatory steps under the provisions of said Senate bill for calling into existence a constitutional convention.

Resolved, That the chairman of this board be instructed to present copies of this resolution to the governor, chief-justice, and secretary, with the request that if other counties of the Territory make similar requests they shall divide the Territory into districts, apportion the number of delegates to the several districts or counties, and do such other acts as may be necessary for the convening of such constitutional convention in manner and form as is provided by the terms of said Senate bill.

APPENDIX C.—APPORTIONMENT.

Whereas the boards of county commissioners of seven-tenths of the counties in the Territory of Wyoming have adopted resolutions requesting the governor, chief-justice, and secretary to divide the Territory into delegate districts, to apportion the number of delegates among the several districts, and to do such other acts as may be necessary for the convening of a constitutional convention in the manner and form provided by the terms of Senate bill 2445, as reported with amendments to the Senate of the United States, on February 27, 1889, by the Committee on Territories; and

Whereas by the terms of said Senate bill it is provided: "The aforesaid delegates to form said convention shall be apportioned within the limits of the proposed State in such districts as may be established as herein provided, in proportion to the population in each of said districts, as near as may be, to be ascertained at the time of making said apportionment by the persons hereinafter authorized to make the same, upon the basis of the votes cast for delegate in Congress at the last general election, in each of which districts the number of Delegates apportioned to such district shall be elected. That said apportionment shall be made by the governor, the chief-justice, and the secretary of the Territory. * * * The number of delegates to said convention shall be fifty-five":

Now, therefore, we, the governor, chief justice, and secretary of the Territory of Wyoming, do certify that in pursuance of the said resolution and of the aforesaid provisions of said Senate bill, we did convene at the capitol in the city of Cheyenne on this 3d day of June, 1889, and did then proceed to divide the Territory into delegate districts, and to apportion the number of delegates among the several districts in proportion to the population in each of said districts as near as may be, upon the basis of the votes cast for Delegate in Congress at the last general election, to wit, on the 6th day of November, 1888. The total number of votes cast for Delegate in Congress at the last general

election was 18,010, and the total number of votes cast in each of the counties in the Territory was as follows, to wit:

Laramie County	3,695	Johnson County	916
Albany County	2,608	Sheridan County	870
Carbon County	2,633	Crook County	1,150
Sweetwater County	1,747	Converse County	1,307
Uinta County	2,037		
Fremont County	1,047	Total	18,010

It was deemed best to divide the Territory into ten delegate districts, and to make each county a separate district. On dividing the total number of votes cast at said last general election by the number of delegates to be elected it was ascertained that one delegate should be accredited to each 327 votes, and proceeding upon this basis the several counties are entitled to delegates as follows: Laramie County, 11 delegates; Albany County, 8 delegates; Carbon County, 8 delegates; Sweetwater County, 5 delegates; Uinta County, 6 delegates; Fremont County, 3 delegates; Johnson County, 3 delegates; Sheridan County, 3 delegates; Crook County, 4 delegates; and Converse County, 4 delegates, making a total of 55 delegates.

We therefore certify that we have this day divided the Territory into the following delegate districts, and have apportioned the number of delegates among the several districts as follows, to wit:

(1) The county of Laramie shall constitute the first district and shall elect 11 delegates.

(2) The county of Albany shall constitute the second district and shall elect 8 delegates.

(3) The county of Carbon shall constitute the third district and shall elect 8 delegates.

(4) The county of Sweetwater shall constitute the fourth district and shall elect 5 delegates.

(5) The county of Uinta shall constitute the fifth district and shall elect 6 delegates.

(6) The county of Fremont shall constitute the sixth district and shall elect 3 delegates.

(7) The county of Sheridan shall constitute the seventh district and shall elect 3 delegates.

(8) The county of Johnson shall constitute the eighth district and shall elect 3 delegates.

(9) The county of Crook shall constitute the ninth district and shall elect 4 delegates.

(10) The county of Converse shall constitute the tenth district and shall elect 4 delegates.

We believe that this Territory is justly entitled to admission as a State, and that it is for the best interests of the Territory and its people that a constitution should be adopted and a State government organized, and application respectfully and earnestly made to the Congress of the United States for the immediate admission of the proposed State of Wyoming.

In witness whereof we have hereunto set out hands at Cheyenne this 3d day of June, 1889.

FRANCIS E. WARREN, *Governor.*
W. L. MAGINNIS, *Chief-Justice.*
S. D. SHANNON, *Secretary.*

APPENDIX D.—PROCLAMATION BY THE GOVERNOR.

Whereas the Territory of Wyoming has the population, material resources, public intelligence and morality necessary to ensure a stable local government therein; and

Whereas it has never been deemed a violation of their duties as loyal citizens of the United States for the people of a Territory to form for themselves a constitution and State government and to apply to Congress for admission to statehood; and

Whereas on the 27th day of February, 1889, a bill, with amendments, entitled "A bill to provide for the formation and admission into the Union of the State of Wyoming, and for other purposes," was favorably reported to the Senate of the United States by the Committee on Territories; and a bill providing, among other things, for the admission of the proposed State of Wyoming, having been reported favorably to the House of Representatives by a like committee; and many members of the House and Senate having expressed opinions favorable to such admission; and it thus being made evident that Congress is disposed to admit Wyoming as a State whenever a suitable constitution is adopted and a State government is formed preparatory to admission; and

Whereas by the general expression of the citizens thereof, the executive is convinced that a very large majority of the people of Wyoming are desirous of forming for themselves a constitution and State government, and of being admitted into the Union, and of exercising the rights and privileges guaranteed to a free and loyal people under the Constitution of the United States; and

Whereas the boards of county commissioners of several counties in the Territory have, by resolution, requested the governor to call a constitutional convention, and have requested the governor, chief-justice, and secretary of the Territory to divide the Territory into delegate districts, to apportion the number of delegates among the several districts, and to do such other acts as may be necessary for the convening of such constitutional convention in the manner and form provided by the terms of the said Senate bill; and

Whereas the governor, chief-justice, and secretary of the Territory, on this 3d day of June, 1889, did convene at the capitol in the city of Cheyenne, and did apportion the number of delegates among the several districts so established, upon the basis of the vote cast for Delegate in Congress at the last general election, as follows, to wit:

(1) The county of Laramie shall constitute the first district and shall elect 11 delegates.

(2) The county of Albany shall constitute the second district and shall elect 8 delegates.

(3) The county of Carbon shall constitute the third district and shall elect 8 delegates.

(4) The county of Sweetwater shall constitute the fourth district and shall elect 5 delegates.

(5) The county of Uinta shall constitute the fifth district and shall elect 6 delegates.

(6) The county of Fremont shall constitute the sixth district and shall elect 3 delegates.

(7) The county of Sheridan shall constitute the seventh district and shall elect 3 delegates.

(8) The county of Johnson shall constitute the eighth district and shall elect 3 delegates.

(9) The county of Crook shall constitute the ninth district and shall elect 4 delegates.

(10) The county of Converse shall constitute the tenth district and shall elect 4 delegates:

Now, therefore, recognizing the superior and material advantages of a State government over our Territorial system, and being desirous of carrying into effect the will of the people, I, Francis E. Warren, governor of the Territory of Wyoming, do issue this, my proclamation to the people of the Territory, recommending that they take such action on their part as may be necessary to secure the admission of Wyoming into the Union of States; and for this purpose I direct that an election be held throughout the Territory on the second Monday of July, 1889, for the election of delegates to a constitutional convention to convene at Cheyenne, the capital of the Territory, at 12 o'clock noon of the first Monday of September, 1889, for the purpose of framing a constitution for the State of Wyoming, and for the purpose of submitting such constitution to the people thereof, for their ratification or rejection.

I suggest that, in organizing a State government preparatory to admission, the provisions of the aforesaid Senate bill should be followed, as nearly as may be possible, and in pursuance thereof the following recommendations are hereby made:

First. The number of delegates to such constitutional convention shall be 55, apportioned among the several districts as hereinbefore set forth.

Second. The delegates apportioned to each district shall be elected exclusively in that district.

Third. Persons who are qualified by the laws of the Territory to vote for representatives to the legislative assembly thereof are hereby authorized to vote for and choose delegates to such constitutional convention.

Fourth. The qualifications for delegates to such constitutional convention shall be such as, by the laws of the Territory, persons are required to possess to be eligible to the legislative assembly thereof.

Fifth. Such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued, in the same manner as is prescribed by the laws of the Territory regulating elections therein for Delegate to Congress.

Sixth. Since the advantages to be obtained by statehood will depend somewhat upon the judicious action of the constitutional convention, it is desirable that the delegates should be representative men, of character and ability, whose work will be satisfactory to Congress and beneficial to the people of the proposed State of Wyoming. The character and fitness of the delegates to be chosen is in fact of greater importance than the manner of their selection, and if the citizens of any county generally prefer to elect their delegates by some equitable method other than that hereinbefore prescribed, it is believed that the delegates so chosen will be recognized and admitted to seats in the convention.

Seventh. The constitution formed by such convention shall be submitted to the people of the Territory for ratification or rejection on the first Tuesday in November, 1889.

Eighth. The convention should fix the per diem and mileage of its members and employés, and certificates of service and expenditure should be made by the officers of the convention and filed with the secretary of the Territory, as Congress will, without doubt, follow is own precedents in providing for the payment thereof.

In testimony whereof I have hereunto set my hand and caused the great seal of the Territory of Wyoming to be affixed at Cheyenne, at the capitol, on this 3d day of June, in year of our Lord, 1889, and of the Independence of the United States of America, the one hundred and thirteenth.

[SEAL.] FRANCIS E. WARREN.

By the governor:

SAMUEL D. SHANNON,
Secretary of Territory.

APPENDIX E.—CONSTITUTION OF THE STATE OF WYOMING.

PREAMBLE.

We, the people of the State of Wyoming, grateful to God for our civil, political, and religious liberties, and desiring to secure them to ourselves and perpetuate them to our posterity, do ordain and establish this constitution.

ARTICLE NO. I.

DECLARATION OF RIGHTS.

SECTION 1. All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

SEC. 2. In their inherent right to life, liberty, and the pursuit of happiness, all members of the human race are equal.

SEC. 3. Since equality in the enjoyment of natural and civil rights is made sure only through political equality, the laws of this State affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.

SEC. 4. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by affidavit particularly describing the place to be searched or the person or thing to be seized.

SEC. 5. No person shall be imprisoned for debt except in cases of fraud.

SEC. 6. No person shall be deprived of life, liberty, or property without due process of law.

SEC. 7. Absolute, arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority.

SEC. 8. All courts shall be open, and every person for an injury done to person, reputation, or property shall have justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the legislature may by law direct.

SEC. 9. The right of trial by jury shall remain inviolate in criminal cases, but a jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve men, as may be prescribed by law. Hereafter a grand jury may consist of twelve men, any nine of whom concurring may find an indictment, but the legislature may change, regulate, or abolish the grand-jury system.

SEC. 10. In all criminal prosecutions the accused shall have the right to defend in person or by counsel, to demand the nature and cause of the accusation, to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process served for obtaining witnesses, and to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

SEC. 11. No person shall be compelled to testify against himself in any criminal case, nor shall any person be twice put in jeopardy for the same offense. If the jury disagree, or if the judgment be arrested after a verdict, or if the judgment be reversed for error in law, the accused shall not be deemed to have been in jeopardy.

SEC. 12. No person shall be detained as a witness in any criminal prosecution longer than may be necessary to take his testimony or deposition, nor be confined in any room where criminals are imprisoned.

SEC. 13. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger.

SEC. 14. All persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted.

SEC. 15. The penal code shall be framed on the humane principles of reformation and prevention.

SEC. 16. No person arrested and confined in jail shall be treated with unnecessary rigor. The erection of safe and comfortable prisons and inspection of prisons and the humane treatment of prisoners shall be provided for.

SEC. 17. The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it.

SEC. 18. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this State, and no person shall be rendered incompetent to hold any office of trust or profit or to serve as a witness or juror because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State.

SEC. 19. No money of the State shall ever be given or appropriated to any sectarian or religious society or institution.

SEC. 20. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right; and in all trials for libel, both civil and criminal, the truth, when published with good intent and for justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law under direction of the court.

SEC. 21. The right of petition and of the people peaceably to assemble to consult for the common good and to make known their opinions shall never be denied or abridged.

SEC. 22. The rights of labor shall have just protection through laws calculated to secure to the laborer proper rewards for his service and to promote the industrial welfare of the State.

SEC. 23. The right of citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts.

SEC. 24. The right of citizens to bear arms in defense of themselves and of the State shall not be denied.

SEC. 25. The military shall ever be in strict subordination to the civil power. No soldier in time of peace shall be quartered in any house without consent of the owner, nor in time of war except in the manner prescribed by law.

SEC. 26. Treason against the State shall consist only in levying war against it or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court; nor shall any person be attainted of treason by the legislature.

SEC. 27. Elections shall be open, free, and equal, and no power, civil or military, shall at any time interfere to prevent an untrammeled exercise of the right of suffrage.

SEC. 28. No tax shall be imposed without the consent of the people or their authorized representatives. All taxation shall be equal and uniform.

SEC. 29. No distinction shall ever be made by law between resident aliens and citizens as to the possession, taxation, enjoyment, and descent of property.

SEC. 30. Perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed. Corporations, being creatures of the State, endowed for the public good with a portion of its sovereign powers, must be subject to its control.

SEC. 31. Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the State, which, in providing for its use, shall equally guard all the various interests involved.

SEC. 32. Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, milling, domestic, or sanitary purposes, nor in any case without due compensation.

SEC. 33. Private property shall not be taken or damaged for public or private use without just compensation.

SEC. 34. All laws of a general nature shall have a uniform operation.

SEC. 35. No *ex post facto* law, nor any law impairing the obligation of contracts, shall ever be made.

SEC. 36. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

SEC. 37. The State of Wyoming is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

ARTICLE No. II.

BOUNDARIES.

SECTION 1. The boundaries of the State of Wyoming shall be as follows: Commencing at the intersection of the twenty-seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude, and running thence west to the thirty-fourth meridian of west longitude, thence south to the forty-first degree of north latitude, thence east to the twenty-seventh meridian of west longitude, and thence north to place of beginning.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the government of this State are divided into three distinct departments—the legislative, executive, and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

ARTICLE No. III.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power shall be vested in a senate and house of representatives, which shall be designated "The Legislature of the State of Wyoming."

SEC. 2. Senators shall be elected for the term of four years and representatives for the term of two years. The senators elected at the first election shall be divided by lot into two classes as nearly equal as may be. The seats of senators of the first class shall be vacated at the expiration of the first two years, and of the second class at the expiration of four years. No person shall be a senator who has not attained the age of twenty-five years, or a representative who has not attained the age of twenty-one years, and who is not a citizen of the United States and of this State, and who has not for at least twelve months next preceding his election resided within the county or district in which he was elected.

SEC. 3. Each county shall constitute a senatorial and representative district; the senate and house of representatives shall be composed of members elected by the legal voters of the counties, respectively, every two years. They shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. Each county shall have at least one senator and one representative; but at no time shall the number of members of the house of representatives be less than twice nor greater than three times the number of members of the senate. The senate and house of representatives first elected in pursuance of this constitution shall consist of sixteen and thirty-three members respectively.

SEC. 4. When vacancies occur in either house by death, resignation, or otherwise, such vacancy shall be filled for the remainder of the term by special election, to be called in such manner as may be prescribed by law.

SEC. 5. Members of the senate and house of represenatives shall be elected on the day provided by law for the general election of a member of Congress, and their term of office shall begin on the first Monday of January thereafter.

SEC. 6. Each member of the first legislature, as a compensation for his services, shall receive $5 for each day's attendance, and 15 cents for each mile traveled in going to and returning from the seat of government to his residence by the usual traveled route, and shall receive no other compensation, perquisite, or allowance whatever. No session of the legislature after the first, which may be sixty days, shall exceed forty days. After the first session the compensation of the members of the legislature shall be as provided by law; but no legislature shall fix its own compensation.

SEC. 7. The legislature shall meet at the seat of government at twelve o'clock, noon, on the second Tuesday of January next succeeding the general election provided by law, and at twelve o'clock, noon, on the second Tuesday of January of each alternate year thereafter, and at other times when convened by the governor.

SEC. 8. No senator or representative shall, during the term for which he was elected, be appointed to any civil office under the State, and no member of Congress or other person holding an office (except that of notary public or an office in the militia) under the United States or this State, shall be a member of either house during his continuance in office.

SEC. 9. No member of either house shall, during the term for which he was elected, receive any increase in salary or mileage under any law passed during that term.

SEC. 10. The senate shall, at the beginning and close of each regular session and at such other times as may be necessary, elect one of its members president; the house of representatives shall elect one of its members speaker; each house shall choose its other officers, and shall judge of the election returns and qualifications of its members.

SEC. 11. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

SEC. 12. Each house shall have power to determine the rules of its proceedings, and to punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, and shall have all other powers necessary to the legislature of a free State. A member expelled for curruption shall not thereafter be eligible to either house of the legislature, and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

SEC. 13. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time publish the same, except such parts as require secrecy, and the yeas and nays on any question shall, at the request of two members, be entered on the journal.

SEC. 14. The sessions of each house and of the committee of the whole shall be open unless the business is such as requires secrecy.

SEC. 15. Neither house shall, without consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 16. The members of the legislature shall in all cases except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

SEC. 17. The sole power of impeachment shall vest in the house of representatives; the concurrence of a majority of all members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

SEC. 18. The governor and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit under the laws of the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

SEC. 19. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

SEC. 20. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

SEC. 21. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the State of Wyoming."

SEC. 22. No bill for the appropriation of money, except for the expenses of the government, shall be introduced within five days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced.

SEC. 23. No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members.

SEC. 24. No bill, except general appropriation bills and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject is embraced in any act which is not expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

SEC. 25. No bill shall become a law except by a vote of a majority of all the members elected to each house, nor unless on its final passage the vote taken by ayes and noes, and the names of those voting be entered on the journal.

SEC. 26. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended, shall be re-enacted and published at length.

SEC. 27. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering, or working roads, or highways; vacating roads, town plats, streets, alleys, or public grounds; locating or changing county seats; regulating county or township affairs; incorporation of cities, towns or villages; or changing or amending the charters of any cities, towns, or villages; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates, or constables; changing the rules of

evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions; giving effect to any informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies, and loan and trust companies; remitting fines, penalties, or forfeitures; creating, increasing, or decreasing fees, percentages, or allowances of public officers; changing the law of descent; granting to any corporation, association, or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity, or franchise whatever, or amending existing charter for such purpose; for punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors, or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the State treasury; relinquishing or extinguishing, in whole or in part, the indebtedness, liabilities, or obligation of any corporation or person to this State or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension, or imparing of liens; creating offices or prescribing the powers or duties of offices in counties, cities, townships or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable no special law shall be enacted.

SEC. 28. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature immediately after their titles have been publicly read and the fact of signing shall be at once entered upon the journal.

SEC. 29. The legislature shall prescribe by law the number, duties, and compensation of the officers and employés of each house, and no payment shall be made from the State treasury, or be in any way authorized to any such person except to an acting officer or employé elected or appointed in pursuance of law.

SEC. 30. No bill shall be passed giving any extra compensation to any public officer, servant or employé, agent or contractor, after services are rendered or contract made.

SEC. 31. All stationery, printing, paper, fuel, and lights used in the legislature and other departments of government shall be furnished, and the printing and binding of the laws, journals, and department reports and other printing and binding, and the repairing and furnishing of the halls and rooms used for the meeting of the legislature and its committees shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and State treasurer.

SEC. 32. Except as otherwise provided in this constitution, no law shall extend the term of any public officer or increase or diminish his salary or emolument after his election or appointment; but this shall not be construed to forbid the legislature from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, if such salaries or emoluments are not fixed by its provisions.

SEC. 33. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in case of other bills.

SEC. 34. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive, and judicial departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

SEC. 35. Except for interest on public debt, money shall be paid out of the treasury only on appropriations made by the legislature, and in no case otherwise than upon warrant drawn by the proper officer in pursuance of law.

SEC. 36. No appropriation shall be made for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of the State, nor to any denominational or sectarian institution or association.

SEC. 37. The legislature shall not delegate to any special commissioner, private corporation, or association any power to make, supervise, or interfere with any municipal improvements, moneys, property, or effects, whether held in trust or otherwise, to levy taxes, or to perform any municipal functions whatever.

SEC. 38. No act of the legislature shall authorize the investment of trust funds by executors, administrators, guardians, or trustees in the bonds or stock of any private corporation.

SEC. 39. The legislature shall have no power to pass any law authorizing the State or any county in the State to contract any debt or obligation in the construction of any railroad, or give or loan its credit to or in aid of the construction of the same.

SEC. 40. No obligation or liability of any person, association, or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, or postponed, or in any way diminished by the legislature; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

SEC. 41. Every order, resolution, or vote in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill.

SEC. 42. If any person elected to either house of the legislature shall offer or promise to give his vote or influence in favor of or against any measure or proposition pending or to be introduced into the legislature, in consideration or upon condition that any other person elected to the same legislature will give, or promise or assent to give, his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced into such legislature, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislature shall give his vote or influence for or against any measure or proposition pending or to be introduced in such legislature, or offer, promise, or assent thereto, upon condition that any other member will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or to be introduced in such legislature, or in consideration that any other member has given his vote or influence for or against any other measure or proposition in such legislature, he shall be deemed guilty of bribery, and any member of the legislature, or person elected thereto, who shall be guilty of either of such offenses shall be expelled and shall not thereafter be eligible to the legislature, and on conviction thereof in the civil courts shall be liable to such further penalty as may be prescribed by law.

SEC. 43. Any person who shall directly or indirectly offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage to any executive or judicial officer or member of the legislature, to influence him in the performance of any of his official duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

SEC. 44. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or practices of solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony, and any person convicted of either of the offenses aforesaid shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust, or profit in this State.

SEC. 45. The offense of corrupt solicitation of members of the legislature or of public officers of the State, or of any municipal division thereof, and the occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

SEC. 46. A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member, and shall not vote thereon.

APPORTIONMENT.

SECTION 1. One Representative in the Congress of the United States shall be elected from the State at large the Tuesday next after the first Monday in November, 1890, and thereafter at such times and places and in such manner as may be prescribed by law. When a new apportionment shall be made by Congress the legislature shall divide the State into Congressional districts accordingly.

SEC. 2. The legislature shall provide by law for an enumeration of the inhabitants of the State in the year 1895, and every tenth year thereafter, and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for senators and representatives on a basis of such enumeration according to ratios to be fixed by law.

SEC. 3. Representative districts may be altered from time to time as public convenience may require. When a representative district shall be composed of two or more counties they shall be contiguous, and the districts as compact as may be. No county shall be divided in the formation of representative districts.

SEC. 4. Until an apportionment of senators and representatives as otherwise provided by law they shall be divided among the several counties of the State in the following manner:

Albany County, two senators and five representatives.
Carbon County, two senators and five representatives.
Converse County, one senator and three representatives.
Crook County, one senator and two representatives.
Fremont County, one senator and two representatives.
Laramie County, three senators and six representatives.
Johnson County, one senator and two representatives.
Sheridan County, one senator and two representatives.
Sweetwater County, two senators and three representatives.
Uinta County, two senators and three representatives.

ARTICLE No. IV.

EXECUTIVE DEPARTMENT.

SECTION 1. The executive power shall be vested in a governor, who shall hold his office for the term of four (4) years and until his successor is elected and duly qualified.

SEC. 2. No person shall be eligible to the office of governor unless he be a citizen of the United States and a qualified elector of the State, who has attained the age of thirty years, and who has resided five years next preceding the election within the State or Territory, nor shall he be eligible to any other office during the term for which he was elected.

SEC. 3. The governor shall be elected by the qualified electors of the State at the time and place of choosing members of the legislature. The person having the highest number of votes for governor shall be declared elected, but if two or more shall have an equal and highest number of votes for governor, the two houses of the legislature at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor shall be made in such manner as shall be prescribed by law.

SEC. 4. The governor shall be commander-in-chief of the military forces of the State, except when they are called into the service of the United States, and may call out the same to execute the laws, suppress insurrection, and repel invasion. He shall have power to convene the legislature on extraordinary occasions. He shall at the commencement of each sesion communicate to the legislature, by message, information of the condition of the State, and recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the Government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature and shall take care that the laws be faithfully executed.

SEC. 5. The governor shall have power to remit fines and forfeitures, to grant reprieves, commutations, and pardons after conviction, for all offenses except treason and cases of impeachment; but the legislature may by law regulate the manner in which the remission of fines, pardons, commutations, and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case is reported to the legislature at its next regular session, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant further reprieve. He shall communicate to the legislature at each regular session each case of remission of fine, reprieve, commutation, or pardon granted by him, stating the name of the convict, the crime for which he was convicted, the sentence and its date, and the date of the remission, commutation, pardon, or reprieve, with his reasons for granting the same.

SEC. 6. If the governor be impeached, displaced, resign, or die, or from mental or physical disease or otherwise become incapable of performing the duties of his office or be absent from the State, the secretary of state shall act as governor until the vacancy is filled or the disability removed.

SEC. 7. When any office from any cause becomes vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill the same by appointment.

SEC. 8. Every bill which has passed the legislature shall, before it becomes a law, be presented to the governor. If he approve, he shall sign; but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon the journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members elected, it shall become a law; but

in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house, respectively. If any bill is not returned by the governor within three days (Sundays excepted) after its presentation to him, the same shall be a law, unless the legislature, by its adjournment, prevent its return, in which case it shall be a law unless he shall file the same, with his objections in the office of the secretary of state within fifteen days after such adjournment.

SEC. 9. The governor shall have power to disapprove of any item or items or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items and part or parts disapproved shall be void unless enacted in the following manner: If the legislature be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

SEC. 10. Any governor of this State who asks, receives, or agrees to receive, any bribe upon any understanding that his official opinion, judgment, or action shall be influenced thereby, or who gives or offers or promises his official influence in consideration that any member of the legislature shall give his official vote or influence on any particular side of any question or matter upon which he is required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the governor, will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislature; or who threatens any member that he, the governor, will remove any person or persons from office or position with intent in any manner to influence the action of said member, shall be punished in the manner now or that may hereafter be provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this State.

SEC. 11. There shall be chosen by the qualified electors of the State, at the times and places of choosing members of the legislature, a secretary of state, auditor, treasurer, and superintendent of public instruction, who shall have attained the age twenty-five years, respectively, shall be citizens of the United States, and shall have the qualifications of State electors. They shall severally hold their offices at the seat of government for the term of four years and until their successors are elected and duly qualified, but no person shall be eligible for the office of treasurer for four years after the expiration of the term for which he was elected. The legislature may provide for such other State officers as are deemed necessary.

SEC. 12. The powers and duties of the secretary of state, of State auditor, treasurer, and superintendent of public instruction shall be as prescribed by law.

SEC. 13. Until otherwise provided by law, the governor shall receive an annual salary of $2,500, the secretary of state, State auditor, State treasurer, and superintendent of public instruction shall each receive an annual salary of $2,000, and the salaries of any of the said officers shall not be increased or diminished during the period for which they were elected, and all fees and profits arising from any of the said offices shall be covered into the State treasury.

SEC. 14. The legislature shall provide for a State examiner, who shall be appointed by the governor and confirmed by the senate. His duty shall be to examine the accounts of State treasurer, supreme court clerks, district court clerks, and all county treasurers, and treasurers of such other public institutions as the law may require, and shall perform such other duties as the legislature may prescribe. He shall report at least once a year, and oftener if required, to such officers as are designated by the legislature. His compensation shall be fixed by law.

SEC. 15. There shall be a seal of State which shall be called the "Great seal of the State of Wyoming;" it shall be kept by the secretary of state and used by him officially as directed by law.

SEC. 16. The seal of the Territory of Wyoming as now used shall be the seal of the State until otherwise provided by law.

ARTICLE NO. V.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the senate, sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, courts of arbitration and such courts as the legislature may, by general law, establish for incorporated cities or incorporated towns.

SEC. 2. The supreme court shall have general appellate jurisdiction, co-extensive with the State, in both civil and criminal causes, and shall have a general superintending control over all inferior courts, under such rules and regulations as may be prescribed by law.

SEC. 3. The supreme court shall have original jurisdiction in quo warranto and mandamus as to all State officers, and in habeas corpus. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of a person held in actual custody, and may make such writs returnable before himself or before the supreme court, or before any district court of the State or any judge thereof.

SEC. 4. The supreme court of the State shall consist of three justices who shall be elected by the qualified electors of the State at a general State election at the times and places at which State officers are elected; and their term of office shall be eight (8) years, commencing from and after the first Monday in January next succeeding their election; and the justices elected at the first election after this constitution shall go into effect shall, at their first meeting provided by law, so classify themselves by lot that one of them shall go out of office at the end of four years and one at the end of six years and one at the end of eight years from the commencement of their term, and an entry of such classification shall be made in the record of the court and signed by them, and a duplicate thereof shall be filed in the office of the secretary of state. The justice having the shortest term to serve and not holding his office by appointment or election to fill a vacancy, shall be the chief justice and shall preside at all terms of the supreme court, and, in case of his absence, the justice having in like manner the next shortest term to serve shall preside in his stead. If a vacancy occur in the office of a justice of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a person to fill the unexpired term occasioned by such vacancy, which election shall take place at the next succeeding general election. The first election of the justices shall be at the first general election after this constitution shall go into effect.

SEC. 5. A majority of the justices of the supreme court shall be necessary to constitute a quorum for the transaction of business.

SEC. 6. In case a judge of the supreme court shall be in any way interested in a cause brought before such court, the remaining judges of said court shall call one of the district judges to sit with them on the hearing of said cause.

SEC. 7. At least two terms of the supreme court shall be held annually at the seat of government at such times as may be provided by law.

SEC. 8. No person shall be eligible to the office of justice of the supreme court unless he be learned in the law, have been in actual practice at least nine years, or whose service on the bench of any court of record, when added to the time he may have practiced law, shall be equal to nine years, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this State or Territory at least three years.

SEC. 9. There shall be a clerk of the supreme court who shall be appointed by the justices of said court and shall hold his office during their pleasure, and whose duties and emoluments shall be as provided by law.

SEC. 10. The district court shall have original jurisdiction of all causes both at law and in equity and in all criminal cases, of all matters of probate and insolvency and of such special cases and proceedings as are not otherwise provided for. The district court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in such cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, injunction, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective districts.

SEC. 11. The judges of the district courts may hold courts for each other and shall do so when required by law.

SEC. 12. No person shall be eligible to the office of judge of the district court unless he be learned in the law, be at least twenty-eight years of age, and a citizen of the United States, nor unless he shall have resided in the State or Territory of Wyoming at least two years next preceding his election.

SEC. 13. There shall be a clerk of the district court in each organized county in which a court is holden who shall be elected, or, in case of vacancy, appointed in such manner and with such duties and compensation as may be prescribed by law.

SEC. 14. The legislature shall provide by law for the appointment by the several district courts of one or more district court commissioners (who shall be persons learned in the law) in each organized county in which a district court is holden; such commission-

ers shall have authority to perform such chamber business in the absence of the district judge from the county or upon his written statement filed with the papers that it is improper for him to act, as may be prescribed by law, to take depositions and perform such other duties, and receive such compensation, as shall be prescribed by law.

SEC. 15. The style of all process shall be "The State of Wyoming." All prosecutions shall be carried on in the name and by the authority of the State of Wyoming, and conclude "against the peace and dignity of the State of Wyoming."

SEC. 16. No duties shall be imposed by law upon the supreme court or any of the judges thereof except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided.

SEC. 17. The judges of the supreme and district courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected, and the salary of a judge of the supreme or district court shall be as may be prescribed by law.

SEC. 18. Writs of errors and appeals may be allowed from the decisions of the district courts to the supreme court under such regulations as may be prescribed by law.

SEC. 19. Until otherwise provided by law, the State shall be divided into three judicial districts, in each of which there shall be elected at general elections, by the electors thereof, one judge of the district court therein, whose term shall be six years from the first Monday in January succeeding his election and until his successor is duly qualified.

SEC. 20. Until otherwise provided by law, said judicial districts shall be constituted as follows:

District number one shall consist of the counties of Laramie, Converse, and Crook.

District number two shall consist of the counties of Albany, Johnson, and Sheridan.

District number three shall consist of the counties of Carbon, Sweetwater, Uinta, and Fremont.

SEC. 21. The legislature may from time to time increase the number of said judicial districts and the judges thereof, but such increase or change in the boundaries of the districts shall not work the removal of any judge from his office during the term for which he may have been elected or appointed; provided the number of districts and district judges shall not exceed four until the taxable valuation of property in the State shall exceed $100,000,000.

SEC. 22. The legislature shall provide by law for the election of justices of the peace in each organized county within the State. But the number of said justices to be elected in each organized county shall be limited by law to such number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions where the amount in controversy, exclusive of costs, does not exceed $200, and they shall have such jurisdiction to hear and determine cases of misdemeanor as may be provided by law, but in no case shall said justices of the peace have jurisdiction when the boundaries of or title to real estate shall come into question.

SEC. 23. Appeals shall lie from the final decisions of justices of the peace and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.

SEC. 24. The time of holding courts in the several counties of a district shall be as prescribed by law, and the legislature shall make provisions for attaching unorganized counties or territory to organized counties for judicial purposes.

SEC. 25. No judge of the supreme or district court shall act as attorney or counselor at law.

SEC. 26. Until the legislature shall provide by law for fixing the terms of courts the judges of the supreme court and district courts shall fix the terms thereof.

SEC. 27. No judge of the supreme or district court shall be elected or appointed to any other than judicial offices or be eligible thereto during the term for which he was elected or appointed such judge.

SEC. 28. The legislature shall establish courts of arbitration, whose duty it shall be to hear and determine all differences and controversies between organizations or associations of laborers and their employers, which shall be submitted to them in such manner as the legislature may provide.

SEC. 29. The legislature may provide by law for the voluntary submission of differences to arbitrators for determination, and said arbitrators shall have such powers and duties as may be prescribed by law, but they shall have no power to render judgment to be obligatory on parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such arbitrators.

SEC. 30. Appeals from decisions of compulsory boards of arbitration shall be allowed to the supreme court of the State, and the manner of taking such appeals shall be prescribed by law.

ARTICLE No. VI.

SUFFRAGE.

SECTION 1. The rights of the citizens of the State of Wyoming to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall equally enjoy all civil, political, and religious rights and privileges.

SEC. 2. Every citizen of the United States of the age of twenty-one years and upwards, who has resided in the State or Territory one year and in the county wherein such residence is located sixty days next preceding any election, shall be entitled to vote at such election, except as herein otherwise provided.

SEC. 3. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election during their attendance at elections and going to and returning therefrom.

SEC. 4. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SEC. 5. No person shall be deemed a qualified elector of this State unless such person be a citizen of the United States.

SEC. 6. All idiots, insane persons, and persons convicted of infamous crimes, unless restored to civil rights, are excluded from the elective franchise.

SEC. 7. No elector shall be deemed to have lost his residence in the State by reason of his absence on business of the United States, or of this State, or in the military or naval service of the United States.

SEC. 8. No soldier, seaman, or marine in the Army or Navy of the United States shall be deemed a resident of this State in consequence of his being stationed therein.

SEC. 9. No person shall have the right to vote who shall not be able to read the constitution of this State. The provisions of this section shall not apply to any person prevented by physical disability from complying with its requirements.

SEC. 10. Nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution, unless disqualified by the restrictions of section six of this article. After the expiration of five years from the time of the adoption of this constitution none but citizens of the United States shall have the right to vote.

SEC. 11. All elections shall be by ballot. The legislature shall provide by law that the names of all candidates for the same office, to be voted for at any election, shall be printed on the same ballot, at public expense, and on election day to be delivered to the voters within the polling place by sworn public officials, and only such ballots so delivered shall be received and counted. But no voter shall be deprived of the privilege of writing upon the ballot used the name of any other candidate. All voters shall be guaranteed absolute privacy in the preparation of their ballots, and the secrecy of the ballot shall be made compulsory.

SEC. 12. No person qualified to be an elector of the State of Wyoming shall be allowed to vote at any general or special election hereafter to be holden in the State until he or she shall have registered as a voter according to law, unless the failure to register is caused by sickness or absence, for which provision shall be made by law. The legislature of the State shall enact such laws as will carry into effect the provisions of this section, which enactment shall be subject to amendment, but shall never be repealed; but this section shall not apply to the first election held under this constitution.

ELECTIONS.

SEC. 13. The legislature shall pass laws to secure the purity of elections and guard against abuses of the elective franchise.

SEC. 14. The legislature shall, by general law, designate the courts by which the several classes of election contests not otherwise provided for shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law shall apply to any contest arising out of an election held before its passage.

SEC. 15. No person except a qualified elector shall be elected or appointed to any civil or military office in the State.

SEC. 16. Every person holding any civil office under the State or any municipality therein shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified, but this shall not apply to members of the legislature, nor to members of any board of assembly, two or more of whom are elected at the same time. The legislature may by law provide for suspending any officer in his functions, pending impeachment or prosecution for misconduct in office.

QUALIFICATIONS FOR OFFICE.

SEC. 17. All general elections for State and county officers, for members of the house of representatives and the senate of the State of Wyoming, and Representatives to the Congress of the United States, shall be held on the Tuesday next following the first Monday in November of each even year. Special elections may be held as now, or as may hereafter be provided by law. All State and county officers elected at a general election shall enter upon their respective duties on the first Monday in January next following the date of their election, or as soon thereafter as may be possible.

SEC. 18. All officers, whose election is not provided for in this constitution, shall be elected or appointed as may be directed by law.

SEC. 19. No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary, fees, or perquisites shall be attached. The legislature may by law declare what offices are incompatible.

OATH OF OFFICE.

SEC. 20. Senators and representatives, and all judicial, State, and county officers shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the constitution of this State, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law."

SEC. 21. The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the supreme court shall be filed in the office of the secretary of state, and in the case of other judicial and county officers in the office of the clerk of the county in which the same is taken; any person refusing to take said oath or affirmation shall forfeit his office, and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury, and be forever disqualified from holding any office of trust or profit within this State. The oath to members of the senate and house of representatives shall be administered by one of the judges of the supreme court or a justice of the peace, in the hall of the house to which the members shall be elected.

ARTICLE No. VII.

EDUCATION.

SECTION 1. The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the State allow, and such other institutions as may be necessary.

SEC. 2. The following are declared to be perpetual funds for school purposes, of which the annual income only can be appropriated, to wit: Such per centum as has been or may hereafter be granted by Congress on the sale of lands in this State; all moneys arising from the sale or lease of sections Nos. 16 and 36 in each township in the State, and the lands selected or that may be selected in lieu thereof; the proceeds of all lands that have been or may hereafter be granted to this State, where, by the terms and conditions of the grant, the same are not to be otherwise appropriated: the net proceeds of lands and other property and effects that may come to the State by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of deceased persons; all moneys, stocks, bonds, lands, and other property now belonging to the common-school fund.

SEC. 3. To the sources of revenue above mentioned shall be added all other grants, gifts, and devises that have been or may hereafter be made to this State and not otherwise appropriated by the terms of the grant, gift, or devise.

SEC. 4. All moneys, stocks, bonds, lands, and other property belonging to a county school fund, except such moneys and property as may be provided by law for current use in aid of public schools, shall belong to and be securely invested and sacredly pre-

served in the several counties as a county public-school fund, the income of which shall be appropriated exclusively to the use and support of free public schools in the several counties of the State.

SEC. 5. All fines and penalties under general laws of the State shall belong to the public-school fund of the respective counties and be paid over to the custodians of such funds for the current support of the public schools therein.

SEC. 6. All funds belonging to the State for public-school purposes, the interest and income of which only are to be used, shall be deemed trust funds in the care of the State, which shall keep them for the exclusive benefit of the public schools, and shall make good any losses that may in any manner occur, so that the same shall remain forever inviolate and undiminished. None of such funds shall ever be invested or loaned except on the bonds issued by school districts, or registered county bonds of the State, or State securities of this State, or of the United States.

SEC. 7. The income arising from the funds mentioned in the preceding section, together with all the rents of the unsold school lands and such other means as the legislature may provide, shall be exclusively applied to the support of free schools in every county in the State.

SEC. 8. Provision shall be made by general law for the equitable distribution of such income among the several counties according to the number of children of school age in each; which several counties shall in like manner distribute the proportion of said fund by them received respectively to the several school districts embraced therein. But no appropriation shall be made from said fund to any district for the year in which a school has not been maintained for at least three months; nor shall any portion of any public-school fund ever be used to support or assist any private school, or any school, academy, seminary, college, or other institution of learning controlled by any church or sectarian organization or religious denomination whatsoever.

SEC. 9. The legislature shall make such further provision by taxation or otherwise, as with the income arising from the general school fund will create and maintain a thorough and efficient system of public schools, adequate to the proper instruction of all the youth of the State, between the ages of six and twenty-one years, free of charge; and in view of such provision so made, the legislature shall require that every child of sufficient physical and mental ability shall attend a public school during the period between six and eighteen years for a time equivalent to three years, unless educated by other means.

SEC. 10. In none of the public schools so established and maintained shall distinction or discrimination be made on account of sex, race, or color.

SEC. 11. Neither the legislature nor the superintendent of public instruction shall have power to prescribe text-books to be used in the public schools.

SEC. 12. No sectarian instruction, qualifications, or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the State, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitution.

SEC. 14. The general supervision of the public schools shall be intrusted to the State superintendent of public instruction, whose powers and duties shall be prescribed by law.

THE UNIVERSITY.

SEC. 15. The establishment of the University of Wyoming is hereby confirmed, and said institution, with its several departments, is hereby declared to be the University of the State of Wyoming All lands which have been heretofore granted or which may be granted hereafter by Congress unto the university as such, or in aid of the instruction to be given in any of its departments, with all other grants, donations, or devises for said university, or for any of its departments, shall vest in said university, and be exclusively used for the purposes for which they were granted, donated, or devised. The said lands may be leased on terms approved by the land commissioners, but may not be sold on terms not approved by Congress.

SEC. 16. The university shall be equally open to students of both sexes, irrespective of race or color; and, in order that the instruction furnished may be as nearly free as possible, any amount in addition to the income from its grants of lands and other sources above mentioned, necessary to its support and maintenance in a condition of full efficiency shall be raised by taxation or otherwise, under provisions of the legislature.

SEC. 17. The legislature shall provide by law for the management of the university, its lands and other property, by a board of trustees, consisting of not less than seven members, to be appointed by the governor by and with the advice and consent of the senate, and the president of the university, and the superintendent of public instruction, as members *ex-officio*, as such having the right to speak but not to vote. The duties and powers of the trustees shall be prescribed by law.

CHARITABLE AND PENAL INSTITUTIONS.

SEC. 18. Such charitable, reformatory, and penal institutions as the claims of humanity and the public good may require shall be established and supported by the State in such manner as the legislature may prescribe. They shall be under the general supervision of a State board of charities and reform, whose duties and powers shall be prescribed by law.

SEC. 19. The property of all charitable and penal institutions belonging to the Territory of Wyoming shall, upon the adoption of this constitution, become the property of the State of Wyoming, and such of said institutions as are then in actual operation shall thereafter have the supervision of the board of charities and reform, as provided in the last preceding section of this article, under provisions of the legislature.

PUBLIC HEALTH AND MORALS.

SEC. 20. As the health and morality of the people are essential to their well-being, and to the peace and permanence of the State, it shall be the duty of the legislature to protect and promote these vital interests by such measures for the encouragement of temperance and virtue, and such restrictions upon vice and immorality of every sort, as are deemed necessary to the public welfare.

PUBLIC BUILDINGS.

SEC. 21. All public buildings and other property belonging to the Territory shall upon the adoption of this constitution, become the property of the State of Wyoming.

SEC. 22. The construction, care, and preservation of all public buildings of the State not under the control of the board or officers of public institutions by authority of law shall be intrusted to such officers or boards, and under such regulations, as shall be prescribed by law.

SEC. 23. The legislature shall have no power to change or to locate the seat of government, the State university, insane asylum, or State penitentiary, but may, after the expiration of ten years after the adoption of this constitution, provide by law for submitting the question of the permanent locations thereof, respectively, to the qualified electors of the State, at some general election, and a majority of all votes upon said question cast at said election, shall be necessary to determine the location thereof; but for said period of ten years, and until the same are respectively and permanently located, as herein provided, the location of the seat of government and said institutions shall be as follows:

The seat of government shall be located at the city of Cheyenne, in the county of Laramie. The State university shall be located at the city of Laramie, in the county of Albany. The insane asylum shall be located at the town of Evanston, in the county of Uinta. The penitentiary shall be located at the city of Rawlins, in the county of Carbon; but the legislature may provide by law that said penitentiary may be converted to other public uses. The legislature shall not locate any other public institutions except under general laws and by vote of the people.

ARTICLE No. VIII.

IRRIGATION AND WATER RIGHTS.

SECTION 1. The water of all natural streams, springs, lakes, or other collections of still water, within the boundaries of the State, are hereby declared to be the property of the State.

SEC. 2. There shall be constituted a board of control, to be composed of the State engineer and superintendents of the water divisions, which shall, under such regulations as may be prescribed by law, have the supervision of the waters of the State and of their appropriation, distribution, and diversion, and of the various officers connected therewith; its decisions to be subject to review by the courts of the State.

SEC. 3. Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

SEC. 4. The legislature shall, by law, divide the State into four water divisions, and provide for the appointment of superintendents thereof.

SEC. 5. There shall be a State engineer who shall be appointed by the governor of the State and confirmed by the Senate; he shall hold his office for the term of six years, or until his successor shall have been appointed and shall have qualified. He shall be president of the board of control, and shall have general supervision of the waters of the

State and of the officers connected with its distribution. No person shall be appointed to this position who has not such theoretical knowledge and such practical experience and skill as shall fit him for the position.

ARTICLE No. IX.

MINES AND MINING.

SECTION 1. There shall be established and maintained the office of inspector of mines, the duties and salary of which shall be prescribed by law. When said office shall be established, the governor shall, with the advice and consent of the Senate, appoint thereto a person proven in the manner provided by law to be competent and practical, whose term of office shall be two years.

SEC. 2. The legislature shall provide by law for the proper development, ventilation, drainage, and operation of all mines in this State.

SEC. 3. No boy under the age of fourteen years, and no woman or girl of any age, shall be employed or permitted to be in or about any coal, iron, or other dangerous mines for the purpose of employment therein; provided, however, this provision shall not affect the employment of a boy or female of suitable age in an office, or in the performance of clerical work at such mine or colliery.

SEC. 4. For any injury to person or property caused by willful failure to comply with the provisions of this article, or laws passed in pursuance hereof, a right of action shall accrue to the party injured, for the damage sustained thereby, and in all cases in this State, whenever the death of a person shall be caused by wrongful act, neglect, or default, such as would, if death had not ensued, have entitled the party injured to maintain an action to recover damages in respect thereof, the person who or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured, and the legislature shall provide by law at its first session for the manner in which the right of action in respect thereto shall be enforced.

SEC. 5. The legislature may provide that the science of mining and metallurgy be taught in one of the institutions of learning under the patronage of the State.

SEC. 6. There shall be a State geologist, who shall be appointed by the governor of the State, with the advice and consent of the senate. He shall hold his office for a term of six years, or until his successor shall have been appointed and shall have qualified. His duties and compensations shall be prescribed by law. No person shall be appointed to this position unless he has such theoretical knowledge and such practical experience and skill as shall fit him for the position; said State geologist shall *ex officio* perform the duties of inspector of mines until otherwise provided by law.

ARTICLE No. X.

CORPORATIONS.

SECTION 1. The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended, or repealed by the legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this State may, as to such business, be regulated, limited, or restrained by law not in conflict with the Constitution of the United States.

SEC. 2. All powers and franchises of corporations are derived from the people and are granted by their agent, the government, for the public good and general welfare and the right and duty of the State to control and regulate them for these purposes is hereby declared. The power, rights, and privileges of any and all corporations may be forfeited by willful neglect or abuse thereof. The police power of the State is supreme over all corporations as well as individuals.

SEC. 3. All existing charters, franchises, special or exclusive privileges under which an actual and bona fide organization shall not have taken place for the purpose for which formed and which shall not have been maintained in good faith to the time of the adoption of this constitution shall thereafter have no validity.

SEC. 4. No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employé waiving any right to recover damages for causing the death or injury of any employé shall be void.

SEC. 5. No corporation organized under the laws of Wyoming Territory or any other jurisdiction than this State shall be permitted to transact business in this State until it shall have accepted the constitution of this State and filed such acceptance in accordance with the laws thereof.

SEC. 6. No corporation shall have power to engage in more than one general line or department of business, which line of business shall be distinctly specified in its charter of incorporation.

SEC. 7. All corporations engaged in the transportation of persons, property, mineral oils, and mineral products, news or intelligence, including railroads, telegraphs, express companies, pipe lines, and telephones, are declared to be common carriers.

SEC. 8. There shall be no consolidation or combination of corporations of any kinds whatever to prevent competition, to control or influence productions or prices thereof, or in any manner to interfere with the public good and general welfare.

SEC. 9. The right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals.

SEC. 10. The legislature shall provide by suitable legislation for the organization of mutual and co-operative associations or corporations.

RAILROADS.

SECTION 1. Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this State and to connect at the State line with railroads of other States. Every railroad shall have the right with its road to intersect, connect with, or cross any other railroad, and all railroads shall receive and transport each other's passengers, and tonnage and cars, loaded or empty, without delay or discrimination.

SEC. 2. Railroads and telegraph lines heretofore constructed, or that may hereafter be constructed, in this State, are hereby declared public highways and common carriers, and as such must be made by law to extend the same equality and impartiality to all who use them, excepting employés and their families and ministers of the gospel, whether individuals or corporations.

SEC. 3. Every railroad corporation or association operating a line of railroad within this State shall annually make a report to the auditor of State of its business within this State, in such form as the legislature may prescribe.

SEC. 4. Exercise of the power and right of eminent domain shall never be so construed or abridged as to prevent the taking by the legislature of property and franchises of incorporated companies and subjecting them to public use the same as property of individuals.

SEC. 5. Neither the State, nor any county, township, school district, or municipality shall loan or give its credit or make donations to or in aid of any railroad or telegraph line:

Provided, That this section shall not apply to obligations of any county, city, township, or school district contracted prior to the adoption of this constitution,

SEC. 6. No railroad or other transportation company or telegraph company in existence upon the adoption of this constitution shall derive the benefit of any future legislation without first filing in the office of the secretary of state an acceptance of the provisions of this constitution.

SEC. 7. Any association, corporation, or lessee of the franchises thereof, organized for the purpose, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines.

SEC. 8. No foreign railroad or telegraph line shall do any business within this State without having an agent or agents within each county through which such railroad or telegraph line shall be constructed upon whom process may be served.

SEC. 9. No railroad company shall construct or operate a railroad within 4 miles of any existing town or city without providing a suitable depot or stopping place at the nearest practicable point for the convenience of said town or city, and stopping all trains doing local business at said stopping place. No railroad company shall deviate from the most direct practicable line in constructing a railroad for the purpose of avoiding the provisions of this section.

ARTICLE No. XI.

(Transferred to Article No. II.)

ARTICLE No. XII.

COUNTY ORGANIZATION.

SECTION 1. The several counties in the Territory of Wyoming as they shall exist at he time of the admission of said Territory as a State are hereby declared to be the counties of the State of Wyoming.

SEC. 2. The legislature shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines. But no new county shall be formed unless it shall contain within the limits thereof property of the valuation of $2,000,000, as shown by last preceding tax returns, and not then unless the remaining portion of the old county or counties shall each contain property of at least $3,000,000 of assessable valuation; and no new county shall be organized, nor shall any organized county be so reduced as to contain a population of less than 1,500 bona fide inhabitants, and in case any portion of an organized county or counties is stricken off to form a new county, the new county shall assume and be holden for an equitable proportion of the indebtedness of the county or counties so reduced. No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off voting on the proposition shall vote in favor of the division.

SEC. 3. The legislature shall provide by general law for changing county seats in organized counties, but it shall have no power to remove the county seat of any organized county.

SEC. 4. The legislature shall provide by general law for a system of township organization and government, which may be adopted by any county whenever a majority of the citizens thereof voting at a general election shall so determine.

SEC. 5. The legislature shall provide by law for the election of such county officers as may be necessary.

ARTICLE No. XIII.

MUNICIPAL CORPORATIONS.

SECTION 1. The legislature shall provide by general laws for the organization and classification of municipal corporations. The number of such classes shall not exceed four, and the powers of each class shall be defined by general laws, so that no such corporation shall have any powers or be subject to any restrictions other than all corporations of the same class. Cities and towns now existing under special charters or the general laws of the Territory may abandon such charter and re-organize under the general laws of the State.

SEC. 2. No municipal corporation shall be organized without the consent of the majority of the electors residing within the district proposed to be so incorporated, such consent to be ascertained in the manner and under such regulations as may be prescribed by law.

SEC. 3. The legislature shall restrict the powers of such corporations to levy taxes and assessments, to borrow money and contract debts, so as to prevent the abuse of such power, and no tax or assessment shall be levied or collected or debts contracted by municipal corporations except in pursuance of law for public purposes specified by law.

SEC. 4. No street passenger railway, telegraph, telephone, or electric-light line shall be constructed within the limits of any municipal organization without the consent of its local authorities.

SEC. 5. Municipal corporations shall have the same right as individuals to acquire rights, by prior appropriation and otherwise, to the use of water for domestic and municipal purposes, and the legislature shall provide by law for the exercise upon the part of incorporated cities, towns, and villages of the right of eminent domain for the purpose of acquiring from prior appropriators, upon the payment of just compensation, such water as may be necessary for the well-being thereof and for domestic uses.

ARTICLE No. XIV.

SALARIES.

SECTION 1. All State, city, county, town, and school officers (excepting justices of the peace and constables in precincts having less than 1,500 population, and excepting court commissioners, boards of arbitration and notaries public) shall be paid fixed and definite salaries. The legislature shall, from time to time, fix the amount of such salaries as are not already fixed by this constitution, which shall in all cases be in proportion to the value of the services rendered and the duty performed.

SEC. 2. The legislature shall provide by law the fees which may be demanded by justices of the peace and constables in precincts having less than 1,500 population, and of court commissioners, boards of arbitration, and notaries public, which fees the said officers shall accept as their full compensation. But all other State, county, city, town, and school officers shall be required by law to keep a true and correct account of all fees collected by them, and to pay the same into the proper treasury when collected, and the officer whose duty it is to collect such fees shall be held responsible, under his bond, for

neglect to collect the same: *Provided*, That in addition to the salary of sheriff they shall be entitled to receive from the party for whom the services are rendered in civil cases such fees as may be prescribed by law.

SEC. 3. The salaries of county officers shall be fixed by law within the following limits, to wit: In counties having an assessed valuation not exceeding $2,000,000, the sheriff shall be paid not more than $1,500 per year. The county clerk shall not be paid more than $1,200 per year. The county and prosecuting attorney shall not be paid more than $1,200 per year. The county treasurer shall not be paid more than $1,000 per year. The county assessor shall not be paid more than $1,000 per year. The county superintendent of schools shall not be paid more than $500 per year.

In counties having an assessed valuation of more than $2,000,000 and not exceeding $5,000,000, the sheriff shall not be paid more than $2,000 per year. The county clerk shall not be paid more than $1,800 per year. The county treasurer shall not be paid more than $1,800 per year. The county assessor shall not be paid more than $1,200 per year. The county and prosecuting attorney shall not be paid more than $1,500 per year. The county superintendent of schools shall not be paid more than $750 per year.

In counties having more than $5,000,000 assessed valuation, the sheriff shall not be paid more than $2,000 per year. The county clerk shall not be paid more than $2,000 per year. The county treasurer shall not be paid more than $2,000 per year. The county assessor shall not be paid more than $1,500 per year. The county and prosecuting attorney shall not be paid more than $2,500 per year. The county superintendent of schools shall not be paid more than $1,000 per year. The county surveyor in each county shall receive not to exceed $8 per day, for each day actually engaged in the performance of the duties of his office.

SEC. 4. The legislature shall provide by general law for such deputies as the public necessities may require, and shall fix their compensation.

SEC. 5. Any county officers performing the duties usually performed by the officers named in this article shall be considered as referred to by section 3 of this article, regardless of the title by which their offices may hereafter be designated.

SEC. 6. Whenever practicable the legislature may, and whenever the same can be done without detriment to the public service shall, consolidate offices in State, county, and municipalities, respectively, and whenever so consolidated the duties of such additional office shall be performed under an ex-officio title.

ARTICLE No. XV.

TAXATION AND REVENUE.

SECTION 1. All lands and improvements thereon shall be listed for assessment, valued for taxation, and assessed separately.

SEC. 2. All coal lands in the State from which coal is not being mined shall be listed for assessment, valued for taxation, and assessed according to value.

SEC. 3. All mines and mining claims from which gold, silver, and other precious metals, soda, saline, coal, mineral oil, or other valuable deposit is or may be produced shall be taxed in addition to the surface improvements, and in lieu of taxes on the lands, on the gross product thereof, as may be prescribed by law: *Provided*, That the product of all mines shall be taxed in proportion to the value thereof.

SEC. 4. For State revenue, there shall be levied annually a tax not to exceed 4 mills on the dollar of the assessed valuation of the property in the State, except for the support of State, educational, and charitable institutions, the payment of the State debt, and the interest thereon.

SEC. 5. For county revenue there shall be levied annually a tax not to exceed 12 mills on the dollar for all purposes, including general school tax, exclusive of State revenue, except for the payment of its public debt and the interest thereon. An additional tax of $2 for each person between the ages of twenty-one years and fifty years, inclusive, shall be annually levied for county school purposes.

SEC. 6. No incorporated city or town shall levy a tax to exceed 8 mills on the dollar in any one year, except for the payment of its public debt and the interest thereon.

SEC. 7. All money belonging to the State, or to any county, city, town, village, or other subdivision therein, except as herein otherwise provided, shall, whenever practicable, be deposited in a national bank or banks, or in a bank or banks incorporated under the laws of this State: *Provided*, That the bank or banks in which such money is deposited shall furnish security to be approved as provided by law, and shall also pay a reasonable rate of interest thereon. Such interest shall accrue to the fund from which it is derived.

SEC. 8. The making of profit, directly or indirectly, out of State, county, city, town, or school district money or other public fund, or using the same for any purpose not

authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

SEC. 9. There shall be a State board, composed of the state auditor, treasurer, and secretary of state.

SEC. 10. The duties of the State board shall be as follows: To fix a valuation each year for the assessment of live-stock and to notify the several county boards of equalization of the rate so fixed at least ten days before the day fixed for beginning assessments; to assess at their actual value the franchises, roadway, road-bed, rails, and rolling-stock, and all other property used in the operation of all railroads and other common carriers, except machine-shops, rolling-mills, and hotels in this State; such assessed valuation shall be apportioned to the counties in which said roads and common carriers are located as a basis for taxation of such property: *Provided*, That the assessment so made shall not apply to incorporated towns and cities. Said board shall also have power to equalize the valuation on all property in the several counties for the State revenue and such other duties as may be prescribed by law.

SEC. 11. All property, except as in this constitution otherwise provided, shall be uniformly assessed for taxation, and the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

SEC. 12. The property of the United States, the State, counties, cities, towns, school districts, municipal corporations, and public libraries, lots with the buildings thereon used exclusively for religious worship, church parsonages, public cemeteries, shall be exempt from taxation, and such other property as the legislature may by general law provide.

SEC. 13. No tax shall be levied, except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

SEC. 14. The power of taxation shall never be surrended or suspended by any grant or contract to which the State or any county or other municipal corporation shall be a party.

ARTICLE No. XVI.

PUBLIC INDEBTEDNESS.

SECTION 1. The State of Wyoming shall not, in any manner, create any indebtedness exceeding 1 per centum on the assessed value of the taxable property in the State, as shown by the last general assessment for taxation, preceding; except to suppress insurrection or to provide for the public defense.

SEC. 2. No debt in excess of the taxes for the current year shall in any manner be created in the State of Wyoming, unless the proposition to create such debt shall have been submitted to a vote of the people and by them approved; except to suppress insurrection or to provide for the public defense.

SEC. 3. No county in the State of Wyoming shall in any manner create any indebtedness, exceeding 2 per centum on the assessed value of taxable property in such county, as shown by the last general assessment, preceding: *Provided, however*, That any county, city, town, village, or other subdivision thereof in the State of Wyoming may bond its public debt existing at the time of the adoption of this constitution, in any sum not exceeding 4 per centum on the assessed value of the taxable property in such county, city, town, village, or other subdivision, as shown by the last general assessment for taxation.

SEC. 4. No debt in excess of the taxes for the current year shall, in any manner, be created by any county or subdivision thereof, or any city, town, or village, or any subdivision thereof in the State of Wyoming, unless the proposition to create such debt shall have been submitted to a vote of the people thereof and by them approved.

SEC. 5. No city, town, or village, or any subdivision thereof, or any subdivision of any county of the State of Wyoming, shall, in any manner, create any indebtedness exceeding per 2 centum on the assessed value of the taxable property therein: *Provided, however*, That any city, town, or village may be authorized to create an additional indebtedness, not exceeding 4 per centum on the assessed value of the taxable property therein as shown by the last preceding general assessment, for purpose of building sewerage therein; debts contracted for supplying water to such city or town are excepted from the operation of this section.

SEC. 6. Neither the State nor any county, city, township, town, school district, or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association, or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation. The State shall not engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

SEC. 7. No money shall be paid out of the State treasury except upon appropriation by law and on warrant drawn by the proper officer, and no bills, claims, accounts, or

demands against the State, or any county or political subdivision, shall be audited, allowed, or paid until a full itemized statement in writing, verified by affidavit, shall be filed with the officer or officers whose duty it may be to audit the same.

SEC. 8. No bond or evidence of indebtedness of the State shall be valid unless the same shall have indorsed thereon a certificate signed by the auditor and secretary of state that the bond or evidence of debt is issued pursuant to law and is within the debt limit. No bond or evidence of any debt of any county, or bond of any township or other political subdivision, shall be valid unless the same have indorsed thereon a certificate, signed by the county auditor or other officer authorized by law to sign such certificate, stating that said bond or evidence of debt is issued pursuant to law and is within the debt limit.

ARTICLE No. XVII.

STATE MILITIA.

SECTION 1. The militia of the State shall consist of all able-bodied male citizens of the State, between the ages of eighteen and forty-five years, except such as are exempted by the laws of the United States or the State. But all such citizens having scruples of conscience averse to bearing arms shall be excused therefrom upon such conditions as shall be prescribed by law.

SEC. 2. The legislature shall provide by law for the enrollment, equipment, and discipline of the militia to conform as nearly as practicable to the regulations for the government of the armies of the United States.

SEC. 3. All militia officers shall be commissioned by the governor, the manner of their selection to be provided by law, and may hold their commissions for such period of time as the legislature may provide.

SEC. 4. No military organization under the laws of the State shall carry any banner or flag representing any sect or society or the flag of any nationality but that of the United States.

SEC. 5. The governor shall be commander-in-chief of all the military forces of the State, and shall have power to call out the militia to preserve the public peace, to execute the laws of the State, to suppress insurrection, or repel invasion.

ARTICLE No. XVIII.

PUBLIC LANDS AND DONATIONS.

SECTION 1. The State of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may be hereafter made, by the United States to the State for educational purposes, for public buildings and institutions, and for other objects, and donations of money with the conditions and limitations that may be imposed by the act or acts of Congress making such grants or donations. Such lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the land commissioners, at not less than three-fourths of the appraised value thereof, and for not less than $10 per acre: *Provided*, That in case of actual and bona fide settlement and improvement thereon at the time of the adoption of this constitution, such actual settler shall have the preference right to purchase the land whereon he may have settled, not exceeding 160 acres, at a sum not less than the appraised value thereof, and in making such appraisement the value of improvements shall not be taken into consideration. If at any time hereafter the United States shall grant any arid lands in the State to the State, on condition that the State reclaim and dispose of them to actual settlers, the legislature shall be authorized to accept such arid lands on such conditions, or other conditions, if the same are practicable and reasonable.

SEC. 2. The proceeds from the sale and rental of all lands and other property donated, granted, or received, or that may hereafter be donated, granted, or received from the United States or any other source, shall be inviolably appropriated and applied to the specific purposes specified in the original grant or gifts.

SEC. 3. The governor, superintendent of public instruction, and secretary of state shall constitute a board of land commissioners who, under such regulations as may be provided by law, shall have the direction, control, disposition, and care of all lands that have been heretofore or may hereafter be granted to the State.

SEC. 4. The legislature shall enact the necessary laws for the sale, disposal, leasing, or care of all lands that have been or may hereafter be granted to the State, and shall, at the earliest practicable period, provide by law for the location and selection of all lands that have been or may hereafter be granted by Congress to the State, and shall pass laws for the suitable keeping, transfer, and disbursement of the land-grant funds, and shall

require of all officers charged with the same or the safe-keeping thereof to give ample bonds for all moneys and funds received by them.

SEC. 5. Except a preference right to buy, as in this constitution otherwise provided, no law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any of the school lands granted to the State subsequent to the survey thereof by the General Government by which the amount to be derived by the sale or other disposition of such lands shall be diminished directly or indirectly.

SEC. 6. If any portion of the interest or income of the perpetual school fund be not expended during any year, said portion shall be added to and become a part of the said school fund.

ARTICLE NO. XIX.—*Miscellaneous.*

HOMESTEADS.

SECTION 1. A homestead as provided by law shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon.

LIVE-STOCK.

SECTION 1. The legislature shall pass all necessary laws to provide for the protection of live-stock against the introduction or spread of pleuro-pneumonia, glanders, splenetic or Texas fever, and other infectious or contagious diseases. The legislature shall also establish a system of quarantine or inspection, and such other regulations as may be necessary for the protection of stock-owners, and most conducive to the stock interests within the State.

CONCERNING LABOR.

SECTION 1. Eight hours actual work shall constitute a lawful day's work in all mines and on all State and municipal works.

LABOR ON PUBLIC WORKS.

SECTION 1. No person not a citizen of the United States or who has not declared his intentions to become such shall be employed upon or in connection with any State, county, or municipal works or employment.

SEC. 2. The legislature shall by appropriate legislation see that the provisions of the foregoing section are enforced.

LABOR CONTRACTS.

SECTION 1. It shall be unlawful for any person, company, or corporation to require of its servants or employés, as a condition of their employment or otherwise, any contract or agreement whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employés while in service of such person, company, or corporation by reason of the negligence of such person, company, or corporation, or the agents or employés thereof, and such contracts shall be absolutely null and void.

POLICE POWERS.

SECTION 1. No armed police force or detective agency or armed body or unarmed body of men shall ever be brought into this State for the suppression of domestic violence, except upon the application of the legislature, or executive, when the legislature can not be convened.

ARTICLE NO. XX.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this constitution may be proposed in either branch of the legistature, and, if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the State at the next general election, and cause the same to be published

without delay for at least twelve consecutive weeks prior to said election in at least one newspaper of general circulation published in each county, and if a majority of the electors shall ratify the same such amendment or amendments shall become a part of this constitution.

SEC. 2. If two or more amendments are proposed they shall be submitted in such manner that the elector shall vote for or against each of them separately.

SEC. 3. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at such election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members, not less than double that of the most numerous branch of the legislature.

SEC. 4. Any nonstitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people.

ARTICLE No. XXI.

SCHEDULE.

SECTION 1. That no inconvenience may arise from a change of the Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, claims, liabilities, and obligations against the Territory of Wyoming, of whatever nature, and rights of individuals, and of bodies corporate, shall continue as if no change had taken place in this government, and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the Territory of Wyoming, shall be as valid as if issued in the name of the State.

SEC. 2. All property, real and personal, and all moneys, credits, claims, and choses in action belonging to the Territory of Wyoming at the time of the adoption of this constitution shall be vested in and become the property of the State of Wyoming.

SEC. 3. All laws now in force in the Territory of Wyoming which are not repugnant to this constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

SEC. 4. All fines, penalties, forfeitures, and escheats accruing to the Territory of Wyoming shall accrue to the use of the State.

SEC. 5. All recognizances, bonds, obligations, or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to and may be prosecuted in the name of the State, and all bonds, obligations, or other undertakings executed to this Territory, or to any officer in his official capacity, shall pass over to the proper State authority and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which have arisen or which may arise before the organization of the judicial department under this constitution, and which shall then be pending, may be prosecuted to judgment and execution in the name of the State.

SEC. 6. All officers, civil and military, holding their offices and appointments in this Territory under the authority of the United States or under the authority of this Territory shall continue to hold and exercise their respective offices and appointments until suspended under this constitution.

SEC. 7. This constitution shall be submitted for adoption or rejection to a vote of the qualified electors of this Territory at an election to be held on the first Tuesday in November, A. D. 1889. Said election, as nearly as may be, shall be conducted in all respects in the same manner as provided by the laws of the Territory for general elections, and the returns thereof shall be made to the secretary of said Territory, who, with the governor and chief-justice thereof, or any two of them, shall canvass the same, and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and a copy of said constitution, articles, propositions, and ordinances. At the said election the ballots shall be in the following form: "For the constitution—Yes. No." And as a heading to each of the ballots, shall be printed on each ballot the following instructions to voters: "All persons who desire to vote for the constitution may erase the word 'No.' All persons who desire to vote against the constitution may erase the word 'Yes.'" Any person may have printed or written on his ballot only the words: "For the constitution" or "Against the constitution," and such ballots shall be counted for or against the constitution accordingly.

SEC. 8. This constitution shall take effect and be in full force immediately upon the admission of the Territory as a State.

SEC. 9. Immediately upon the admission of the Territory as a State, the governor of the Territory, or in case of his absence or failure to act, the secretary of the Territory, or in case of his absence or failure to act, the president of this convention, shall issue a proclamation, which shall be published and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people for all State, district, and other officers created and made elective by this constitution, and fixing a day for such election, which shall not be less than forty days after the date of such proclamation nor more than ninety days after the admission of the Territory as a State.

SEC. 10. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given, in the manner and for the length of time provided by the laws of the Territory in cases of general elections for Delegate to Congress, and county and other offices. Every qualified elector of the Territory at the date of said election shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the Territory for general elections, and the returns thereof shall be made to the canvassing board hereinafter provided for.

SEC. 11. The governor, secretary of the Territory, and president of this convention, or a majority of them, shall constitute a board of canvassers to canvass the vote of such election for member of Congress, all State and district officers, and members of the legislature. The said board shall assemble at the seat of government of the Territory on the thirtieth day after the day of such election (or on the following day if such day fall on Sunday) and proceed to canvass the votes for all State and district officers and members of the legislature, in the manner provided by the laws of the Territory for canvassing the vote for Delegate to Congress, and they shall issue certificates of election to the persons found to be elected to said offices, severally, and shall make and file with the secretary of the Territory an abstract, certified by them, of the number of votes cast for each person for each of said offices, and of the total number of votes cast in each county.

SEC. 12. All officers elected at such election, except members of the legislature, shall, within thirty days after they have been declared elected, take the oath required by this constitution, and give the same bond required by the law of the Territory to be given in case of like officers of the Territory or district, and shall thereupon enter upon the duties of their respective offices; but the legislature may require by law all such officers to give other or further bonds as a condition of their continuance in office.

SEC. 13. The governor-elect of the State, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the legislature of the State at the seat of government, on a day to be named in said proclamation, and which shall not be less than thirty nor more than sixty days after the date of said proclamation. Within ten days after the organization of the legislature, both houses of the legislature, in joint session, shall then and there proceed to elect, as provided by law, two Senators of the United States for the State of Wyoming. At said election the two persons who shall receive the majority of all the votes cast by said senators and representatives shall be elected as United States Senators, and shall be so declared by the presiding officers of said joint session. The presiding officers of the senate and house shall issue a certificate to each of said Senators certifying his election, which certificates shall also be signed by the governor and attested by the secretary of state.

SEC. 14. The legislature shall pass all necessary laws to carry into effect the provisions of this constitution.

SEC. 15. Whenever any two of the judges of the supreme court of the State elected under the provisions of this constitution shall have qualified in their offices, the causes then pending in the supreme court of the Territory, and the papers, records, and proceedings of said court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the supreme court of the State; and until so superseded the supreme court of the Territory and the judges thereof shall continue with like powers and jurisdiction as if this constitution had not been adopted. Whenever the judge of the district court of any district elected under the provisions of this constitution shall have qualified in office, the several causes then pending in the district court of the Territory within any county in such district, and the records, papers, and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the State for such county; and until the district courts of this Territory shall be superseded in the manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and power, to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the Territory.

SEC. 16. Until otherwise provided by law the seals now in use in the supreme and district courts of this Territory are hereby declared to be the seals of the supreme and district courts, respectively, of the State.

SEC. 17. Whenever this constitution shall go into effect, records and papers and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the district court of the same county, and the said district court shall proceed to final decree or judgment order or other determination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted.

SEC. 18. Senators and members of the house of representatives shall be chosen by the qualified electors of the several senatorial and representative districts as established in this constitution until such districts shall be changed by law, and thereafter by the qualified electors of the several districts as the same shall be established by law.

SEC. 19. All county and precinct officers who may be in office at the time of the adoption of this constitution shall hold their respective offices for the full time for which they may have been elected, and until such time as their successors may be elected and qualified, as may be provided by law, and the official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted.

SEC. 20. Members of the legislature and all State officers, district and supreme judges elected at the first election held under this constitution shall hold their respective offices for the full term next ensuing such election, in addition to the period intervening between the date of their qualification and the commencement of such full term.

SEC. 21. If the first session of the legislature under this constitution shall be concluded within twelve months of the time designated for a regular session thereof, then the next regular session following said special session shall be omitted.

SEC. 22. The first regular election that would otherwise occur following the first session of the legislature shall be omitted, and all county and precinct officers elected at the first election held under this constitution shall hold their office for the full term thereof, commencing at the expiration of the term of the county and precinct officers then in office, or the date of their qualification.

SEC. 23. This convention does hereby declare on behalf of the people of the Territory of Wyoming that this constitution has been prepared and submitted to the people of the Territory of Wyoming for their adoption or rejection, with no purpose of setting up or organizing a State government until such time as the Congress of the United States shall enact a law for the admission of the Territory of Wyoming as a State under its provisions.

ORDINANCES.

The following articles shall be irrevocable without the consent of the United States and the people of this State:

SECTION 1. The State of Wyoming is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

SEC. 2. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

SEC. 3. The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without this State shall never be taxed at a higher rate than the lands belonging to residents of this State; that no taxes shall be imposed by this State on lands or property therein, belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing in this article shall preclude this State from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto, by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indian under any acts of Congress containing a provision exempting the lands thus granted from taxation, which last-mentioned lands shall be exempt from taxation so long, and to such an extent, as is, or may be, provided in the act of Congress granting the same.

SEC. 4. All debts and liabilities of the Territory of Wyoming shall be assumed and paid by this State.

SEC. 5. The legislature shall make laws for the establishment and maintenance of systems of public schools which shall be open to all the children of the State and free from sectarian control.

Done in open convention, at the city of Cheyenne, in the Territory of Wyoming, this 30th day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

Attest:

JOHN K. JEFFREY,
Secretary.

Signatures of members of the constitutional convention:

Mellville C. Brown, president; John K. Jeffrey, secretary; Geo. W. Baxter, A. C. Campbell, J. A. Casebeer, C. D. Clark, Henry A. Coffeen, Asbury B. Conaway, Henry S. Elliott, Mortimer N. Grant, Henry G. Hay, Frederick H. Harvey, Mark Hopkins, John W. Hoyt, Wm. C. Irvine, James A. Johnston, Jesse Knight, Elliott S. N. Morgan, Edward J. Morris, John M. McCandlish, Herman F. Menough, Caleb P. Organ, Louis J. Palmer, C. W. Holden, H. G. Nickerson, A. L. Sutherland, W. E. Chaplin, Jonathan Jones, John L. Russell, Geo. W. Fox, Frank M. Foote, Chas. H. Burritt, Chas. N. Potter, D. A. Preston, John A. Riner, Geo. C. Smith, H. E. Teschemacher, C. L. Vagner, Thos. R. Reid, Robert C. Butler.

(Other members were obliged to leave before the constitution had been engrossed.)

Variations from original copy of constitution (as filed in office of secretary of the Territory) made by direction of revision committee.

ARTICLE NO. 11—*Boundaries.*

Inserted as one section of Article No. 2.

ARTICLE NO. 19—*Miscellaneous.*

Sections on Arbitration and Board of Arbitration inserted as sections 28 and 29 of Article No. 5; Judicial Department, section 28 of same article, being made section 30.

ARTICLE NO. 7—*Education.*

Section 13. Omitted as being identical in substance with section 3, Article No. 18, Public Lands and Donations:

SEC. 13. The governor, secretary of state, State treasurer, and superintendent of public instruction shall constitute the board of land commissions, which, under direction of the legislature, as limited by this constitution, shall have direction, control, leasing, and disposal of the lands of the State granted, or which may be hereafter granted, for the support and benefit of public schools, subject to the further limitations that the sale of all lands shall be at public auction, after such delay (not less than the time fixed by Congress) in portions at proper intervals of time, and at such minimum prices (not less than the minimum fixed by Congress) as to realize the largest possible proceeds.

TERRITORY OF WYOMING, SECRETARY'S OFFICE,
Cheyenne, November 27, 1889.

I do hereby certify that the annexed and foregoing printed copy of the constitution of the proposed State of Wyoming is a true and correct copy of the original thereof, as filed in this office on the 30th day of September, A. D. 1889, with the exception of the variations noted on page 75 of said printed copy.

I further certify that said constitution was submitted, for adoption or rejection, to a vote of the qualified electors of said Territory, at an election held on Tuesday, the 5th day of November, A. D. 1889, and that a majority of the votes cast at said election was in favor of the adoption of said constitution.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the Territory the date first above written.

[SEAL.]

JOHN W. MELDRUM,
Secretary of Wyoming Territory.

UNITED STATES OF AMERICA, *Wyoming Territory:*

I, John W. Meldrum, secretary of the Territory of Wyoming, do hereby certify that I have carefully compared the annexed and foregoing printed copy of the constitution of the proposed State of Wyoming with the original as filed in this office on the 30th day of September, A. D. 1889, and find the same to be a true and correct transcript thereof with the exception of the variations noted on page 75 of said printed copy. I further certify that said constitution was submitted for adoption or rejection to a vote of the qualified electors of said Territory at an election held on Tuesday the 5th day of November, A. D. 1889; that the returns of said election were made and canvassed as provided in section 7, article 21 of said constitution, and that the result thereof was as follows:

Total number of votes cast	8,195
Total number of votes for the constitution	6,272
Total number of votes against the constitution	1,923
Majority of votes for the constitution	4,349

In testimony whereof I have hereunto set my hand and affixed the great seal of the Territory at Cheyenne, this 14th day of December, A. D. 1889.

[SEAL.] JOHN W. MELDRUM,
Secretary of Wyoming Territory.

APPENDIX F.—MEMORIAL PRAYING FOR THE ADMISSION OF WYOMING INTO THE UNION OF STATES.

To the President and Congress of the United States:

The people of Wyoming, prompted thereto by a consideration of the great importance of an early escape from the Territorial condition, and of the rights which pertain to American citizens, having taken the preliminary steps toward organizing a State government by the adoption of a constitution, republican in form, do now, through their authorized agents, present such constitution to the President and Congress of the United States and respectfully pray to be admitted as a State into the Union of States.

STEPS ANTECEDENT.

During the nearly twenty-one years since the organization of the Territory, the people of Wyoming have with energy, industry, and becoming patience labored to reclaim the vast region of country embraced within its boundaries, meanwhile graciously accepting the general rule of Federal authorities; confident that, when sufficiently populous and sufficiently developed to justify such action, the Territory would be cheerfully accorded the full benefits of statehood. In their judgment, that condition of things has been fully realized. And accordingly, moved by their conviction of what was demanded, and by the known wish of the great body of their constituents, the tenth legislative assembly, which convened in January, 1888, memorialized Congress for an enabling act; declaring it to be "manifest that the prosperity and welfare of the people of this Territory will advance under State institutions far beyond what can be realized under a Territorial condition." This memorial is hereto attached as Appendix A.

Through the instrumentality of the Delegate from Wyoming, Hon. Joseph M. Carey, a bill was accordingly introduced in the Senate, during the Fiftieth Congress (S. 2445), "to provide for the formation and admission into the Union of the State of Wyoming, and for other purposes." During the closing days of that Congress the Committee on Territories, to whom it was referred, having amended the same, unanimously reported it, with the recommendation that it pass, setting forth in a very strong light as reasons therefor the vastness and varied character of the resources of the Territory, its very considerable development, its high financial standing, the excellent provision made for education, as well as for public charities, and the sufficiency of population.

At the same session, a bill (H. R. 12411) to enable Wyoming and certain other Territories to form constitutions and state governments was also favorably reported by the House Committee on Territories, whose report in like manner illustrated the wealth of Wyoming, with its advanced condition and excellent prospects; submitting in connection that the facts fully established the claims of Wyoming to statehood.

Not doubting that if time had permitted an enabling act would have been passed by Congress during said session, and assuming the no less favorable action of the Fifty first Congress upon a proper constitution presented for its approval, boards of county

commissioners of a large majority of the counties, basing their action on the Senate bill aforesaid, passed resolutions expressing the opinion that there should be immediate action to this end; pledging themselves to put in operation the election machinery under the laws of the Territory for the election of delegates to a constitutional convention, as well as to submit such constitution as should be framed, to the people for their ratification or rejection, in case the Territorial officers in said bill designated should take the requisite initiatory steps and requesting such Territorial officers to divide the Territory into districts, apportion the number of delegates thereto respectively, and do such other acts as were necessary for convening a constitutional convention, in the manner and form provided by the terms of said Senate bill.

The form of resolution so adopted by the county boards is hereto attached as Appendix B.

In pursuance of the requests so made, the governor, chief-justice and secretary of the Territory did on the third day of June, 1889, convene at the capitol, divide the Territory into delegate districts and apportion the number of delegates thereto on the basis of the population of each as shown by the votes cast for Delegate in Congress at the last general election, namely, on the 6th of November, 1888, officially certifying to such action on their part; which certificate will be found hereto attached as Appendix C.

Whereupon the governor of the Territory, "recognizing the superior and material advantages of a State government over our Territorial system, and being desirous of carrying into effect the will of the people," issued his proclamation, recommending the necessary action and directing that an election be held throughout the Territory on the second Monday of July, 1889, for the election of delegates to a constitutional convention to assemble at Cheyenne on the first Monday of September, 1889, for the purpose of framing a constitution for the State of Wyoming, and of submitting such constitution to the people for their ratification or rejection; also recommending that in framing a State government "the provisions of the aforesaid Senate bill be followed as nearly as possible," and directing that the constitution so formed by such convention be submitted to the people on the first Tuesday of November, 1889.

The said proclamation is hereto attached as Appendix D.

In obedience to the call of the governor, fifty-five delegates were chosen, and on the said second day of September, 1889, delegates to the number of forty-nine, every county and both political parties being represented, convened in the capitol at Cheyenne, and having been duly sworn, organized as a convention and proceeded to frame the constitution, a copy of which will be found attached hereto as Appendix E.

The constitution so framed was submitted as directed, according to the provisions of section 7 of article 21 thereof, and was ratified by nearly five-sixths of the citizens voting thereon, by a vote small in itself, and yet large in view of the little opposition felt by the people, and of the facts that no other issue was presented and that the day of the election followed one of the severest snow-storms ever known at that season and was also marked by extreme cold, rendering it practically impossible for the people of many precincts to reach the polls.

From the foregoing, it will be apparent that the people of Wyoming are almost unanimous in their desire for a State government, and that they have earnestly, harmoniously and with due observance of the proper forms taken all the steps necessary to a formal application for admission into the Union.

PRECEDENTS FOR LIKE ACTION.

Numerous precedents for just such methods of procedure might be cited, nearly half of the whole number of States admitted since the formation of the Federal Union (to wit, Vermont, Kentucky, Tennessee, Maine, Michigan, Arkansas, Florida, Iowa, Wisconsin, California and Oregon) having in like manner proceeded without enabling acts from Congress.

THE RIGHT TO ADMISSION.

Discussing briefly the grounds upon which the admission may be urged as a right, it may be declared a settled principle of the Government that territory acquired by the United States, is, in the language of Chief-Justice Taney (19 Howard, 446), "acquired to become a State, and not to be held as a colony and governed by Congress by absolute authority"—that "Territorial governments are organized as matters of necessity, because the people are too few in number and scant in resources to maintain a State government," but "are contrary to the spirit of our American constitution," and "are to be tolerated and continued only so long as that necessity exists." This view has been entertained by leading statesmen from Washington's day to the present time. It found expression in the Ordinance of 1787, which, giving to the Northwest Territory at first a colonial government, yet carefully provided for an

early transition to the Territorial state and then for the admission of States formed therefrom, at as early a day as practicable, and on such conditions as should be deemed "consistent with the general interests of the Confederacy." It also had expression in the Louisiana treaty, which secured to the Government the territory out of which have been formed so many great States; the third article of which treaty says: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and *admitted as soon as possible*, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

The same principle is recognized in the treaty of 1848 with Mexico, whereby yet other vast areas were added to our domain.

It is by virtue of these treaties that the area embraced within our boundaries became a part of the Federal domain; on which account it may of right be claimed that the principle therein enunciated has full application to the case of Wyoming.

While the expression "as soon as possible, according to the principles of the Federal Constitution" is general and indefinite, it will not be denied that it involves the idea of reasonable conditions and clearly implies a strong and solemn obligation of the Federal Government to deal with the people of the Territories in a just and equitable manner—as their fiduciary, for the time holding in trust the most sacred interests, bound to relieve them at the earliest moment, consistent with the general welfare, from the disadvantages of the Territorial condition.

THE CONDITIONS REQUISITE ALREADY FULFILLED.

The proper conditions to be fulfilled by any Territory seeking admission are simply these:

1. The boundaries of the proposed State should be free from the embarrassment of conflicting claims, and should include such reasonable area as will at once insure a strong and competent State and in no way disturb the policy of the Federal Government or the peace of neighboring communities.

As to this matter, the boundaries proposed for the State of Wyoming are precisely those fixed by Congress when the Territory was organized, and the physical features of the area of 98,000 square miles embraced are of such character as to favor homogeneity of population and harmony between all sections.

THE MATERIAL FOUNDATION VAST AND SUBSTANTIAL.

2. There should be a sufficient material foundation upon which to build the State.

On this head there is but little need of enlargement, since the resources of Wyoming are already well known to the world as being unsurpassed, either in variety or extent, by those of any equal area. Of the whole area, the greater portion affords as good grazing for stock as can be found in the world; some ten million acres are fertile valley lands, irrigable by means of numerous streams, no less remarkable for the permanence of water supply than for their wide and equal distribution over the whole Territory; while the eccentric chains and spurs of mountains, much broken up and interrupted by broad stretches of valley and plain, besides being clothed, many of them, with forests of timber, are also great store-houses of mineral wealth, containing not only gold and silver, copper and tin, but an almost unexampled supply of other minerals, such as iron, asbestos, mica, plumbago, sulphur, mineral paint, kaolin, fire-clay and gypsum; also granites, sandstones, limestones, and marbles in great variety. Moreover, outside of the mountain ranges, some twenty thousand square miles of broken and basin lands are underlaid with coal of excellent quality in veins of extraordinary thickness. Vast deposits of soda and magnesia occur in many localities; while the oil-basins are so many and so extensive as to indicate that Wyoming may become one of the most important petroleum districts of the world.

IMPORTANT DEVELOPMENT ALREADY ACHIEVED.

3. It is admitted that the resources of a Territory seeking admission should have been so far developed as to furnish the requisite guaranty of ability on the part of the new State to support a State government and to perform its part as a member of the family of States.

That this point has been reached by Wyoming, there is no room for doubt. Notwithstanding the recent heavy losses in the department of live stock, the total assessed valuation of property has reached in 1889 the sum of $31,431,495—a valuation representing a real wealth of not less than $100,000,000; including 900 miles of railway with equipment; 5,868,370 acres of land assessed; 4,508 miles of irrigating ditches, for the irrigation of 2,000,000 acres of land and valued by the Territorial engineer at $10,000,000; about 3,000,000 head of live stock; together with a large

amount in roads, bridges, and other general improvements, besides developed mines (those of coal alone being valued at $10,000,000 and yielding $4,000,000 to $5,000,000 worth of coal annually), with mills, furnaces, and factories, and the very considerable amounts in cities and villages, characterized by the substantiality and even elegance of their structures, both public and private. Possessing all these, and adding thereto her numerous extensive mercantile houses and her banks, increased from one national bank in 1871, with a capital of $75,000, to nineteen banks, national and private, in 1889, with a total capital of $1,553,000, Wyoming is abundantly able to make comparison of her industrial development and financial condition with those of any of the Territories that have gained admission since the formation of the Union—more than able to compare with many, as, for example, with California, whose assessable wealth (assuming that it was assessed at even 60 per cent. of its true value) at the date of admission was $13,297,123; Arkansas, whose valuation fourteen years after admission was $19,000,000; Florida, whose valuation four years after admission was $13,400,000; Iowa, whose valuation four years after admission was $14,400,000; Oregon, whose valuation two years after admission was $19,084,000; and Kansas, whose valuation at the date of admission was but $22,518,282.

A SUFFICIENT AND WORTHY POPULATION.

4. It is admitted that there should be such number of people with such intelligence and virtue as will constitute a reasonable guaranty of a successful and honorable career for the new State.

Touching the question of mere numbers in this case, it is proper to say that it is of necessity a matter of estimate on the basis of the vote, since the census of 1880. In 1870 the population was 9,118; in 1880, 20,789. In 1888 the vote for Delegate was 18,010, nearly equal to the whole population of eight years before. The rapid increase has been on account of the extraordinary progress of agriculture, as shown by the construction of no less than 2,600 irrigating ditches within the past five years, by the increase in the amount of land assessed to owners, and finally, by the recent making of thousands of homes and the building of prosperous cities and villages in districts wholly uninhabited at the date of the last census.

Concluding on this one point, it is safe to assume that a population equal to the marvelous development faintly outlined above is a sufficient population, whether it number more or less than that of some other Territories heretofore admitted, especially when it is borne in mind that some of the great States were admitted with a population less than one-half that of Wyoming at a low estimate, and that the average population of seventeen of the States, as estimated by their own people at date of admission, was but 60,000.

As to character the people of Wyoming are of the very best class of American citizens, having come from the most enlightened portions of the United States and Europe. Their intelligence is manifest from the facts that those over ten years of age unable to read and write amount to $2\frac{6}{10}$ per cent. only; that without Government aid or a permanent school fund they have maintained a compulsory school system since the organization of the Territory—a system under which schools of excellent character and for the education of all the children are for the most part kept open during the the year; that they have founded a free university, now in the third year of its work, with building and grounds valued at $150,000, with an able faculty of eight regular instructors and several lecturers; that the property consecrated to educational uses generally amounts to not less than $1,000,000; that free public libraries, maintained by a general county tax, have been established and liberally supported in the principal cities; that newspapers are well supported at all the centers; that numerous literary associations are in active operation for the promotion of general culture, and that an enterprising academy of sciences is already contributing to the progress of science and the arts. The virtue of the people and their active interest in all matters of social advancement are attested by the general good order of the community, the prevalence of religious organizations, and the munificent provision made for the unfortunate classes by the establishment and liberal maintenance of hospitals and of asylums for the insane, the deaf and dumb, and blind. Their integrity is also manifest from the solidity of mercantile and banking-houses, the non-default of public officers, and that extraordinary financial credit of Territory, counties, and municipalities which has enabled them to negotiate their securities at a premium of 5 per cent. to $12\frac{1}{2}$ per cent., although bearing low rates of interest.

5. It is important that there should be such homogeneity of the population and such share in the spirit, aims, and institutions of the country as will afford assurance of the requisite co-operation of the new State in furthering the great ends of the nation.

In Wyoming there are no dissensions among the people, whether on the ground of differing nationalities or diverse religions. They are as homogeneous and harmonious as the people of any of the States. In the language of the convention's address

to the people, "the residents of Wyoming are the descendants of free citizens—such as framed the Constitution of the United States. The loyalty of the sons to republican institutions and their love of liberty have not been diminished but increased by the hardships, dangers, and difficulties that have been encountered and overcome in laying the foundations of the Commonwealth."

A GOVERNMENT REPUBLICAN IN FORM.

6. If it be a *sine qua non* that the State government to be framed shall be "republican in form," then it may be confidently asserted that the constitution for the State of Wyoming, herewith submitted for the approval of Congress, is pre-eminently republican, both in formand spirit, providing not only the usual frame of republican government, but also declaring absolute equality of rights, natural, civil, and religious, and likewise guarantying full equality of political rights and privileges to all citizens equal to the exercise of the political function, regardless of any condition or circumstance whatsoever other than individual incompetency or unworthiness duly ascertained according to law.

A CONSTITUTION WITH PROPER COMPACTS AND SAFEGUARDS.

7. The further conditions precedent that the constitution and ordinances offered for the approval of Congress shall duly protect the property of the United States within the proposed State, and shall make no unjust discrimination against citizens of other States; that all debts and liabilities of the Territory shall be assumed and paid by the State; that perfect toleration of religious sentiment and opinion shall be secured, and that the legislature shall make laws for the establishment and maintenance of a system of public schools open to all the children of the State and free from sectarian control—all these conditions are entirely fulfilled by the constitution herewith submitted.

8. If it be also a reasonable requirement that the constitution shall afford every possible guaranty to the freedom and purity of elections, honesty and economy of legislation, competency and purity of administration, justice between man and man, just and equal taxation, with freedom from the heavy burdens of public indebtedness, reasonable limitations upon corporate power, with equal and suitable provisions for the encouragement of the industries of the State as well as for the protection of the laboring classes of the people, then your memorialists represent that all these great interests have found in the constitution for Wyoming all such guaranties of every sort as the representatives of the people in convention were able to devise.

Wherefore the people of Wyoming, feeling the justice of their claims, present this their cause in full confidence that it will have favorable consideration from the President and Congress of the United States. We present no grievances, file no bill of complaint in their behalf. Their conviction is deep that great benefits in the form of a proper increase of public confidence and consequent influx of population and of capital, with more rapid growth of industries and a general increase of activities in every department of life, would result from statehood, while they also crave that independence so dear to every American heart, and hence would press their claims in the strongest possible manner. They believe that there has never been a case in the whole history of the admission of States where less could have been said against the proposition on any score. Representing them, we have made demonstration of vastness and variety of resources as a foundation for great industries, actual industrial development quite beyond that of most of the existing States when admitted, with extraordinary proofs of an advanced social state, and finally that the inhabitants of Wyoming are an intelligent, enterprising, and virtuous people, more than sufficient in number to assume the responsibilities of maintaining a prosperous State—a people as worthy as competent, and strongly desiring not only the material benefits that would certainly follow admission, but also those priceless immunities and dignities which attach to self-governing powers; a people, moreover, with oneness of feeling and with earnestness of purpose to place Wyoming in the very vanguard of the Union.

Hence this petition, for the granting of which your memorialists will ever pray.

JOHN A. RINER,
CLARENCE D. CLARK,
JOHN W. HOYT,
HENRY S. ELLIOTT,
WM. C. IRVINE,
HENRY A. COFFEEN,
H. G. NICKERSON,
J. A. CASEBEER,
ELLIOTT S. N. MORGAN,
LOUIS J. PALMER,

Memorial Committee appointed by Constitutional Convention.

APPENDIX G.—ENROLLED HOUSE JOINT RESOLUTION NO. 1, HOUSE OF REPRESENTATIVES, WYOMING TERRITORY.

[Eleventh Legislative Assembly.]

Be it resolved by the council and the house of representatives of the eleventh legislative assembly of the Territory of Wyoming, that the Congress of the United States of America be memorialized as follows:

MEMORIAL.

The eleventh legislative assembly of the Territory of Wyoming respectfully represents to the Congress of the United States of America the following:

The last preceding legislative assembly of this Territory adopted and forwarded a memorial to Congress praying for admission into the Federal Union. Since that time, which was about two years ago, a bill for that purpose was introduced into each branch of Congress and reported favorably in each House at the close of the last session, but too late for action by those bodies. Encouraged by these favorable movements on the part of the committees of Congress, the people of this Territory, through the several boards of the county commissioners, petitioned the governor to proceed, under the Senate bill for the admission of Wyoming, to call a constitutional convention, and an election was ordered for such purpose. The members-elect convened last September at the capital of the Territory, and, after a thirty days' session, framed a constitution for the State of Wyoming, which was submitted to the people at a special election held on the 5th day of November last and adopted at that time by a large majority. The proper committee of the constitutional convention, duly authorized thereby, has laid before your honorable bodies the constitution and their appeal for admission.

We deem it our duty to renew the memorial adopted by our predecessors which has been fortified by the vote of the people, a precedent followed by a number of States which have obtained admission without an enabling act.

All of the arguments for admission detailed in the memorial of the last legislative assembly herein referred to exist now in an augmented degree. The Territory has largely increased in population and wealth. Our actual assessable property is nearly one hundred millions, while our Territorial debt is but $320,000, representing an expenditure for public buildings, namely, a capitol, a university, an asylum for the insane, a deaf mute institute, and the preparation for a Territorial penitentiary, which are worth much more than the sum expended in their erection. We annually expend for the support of our common schools for county purposes, including internal improvements for courts and for Territorial purposes, more than twenty times the amount received from the Government. Our Territory will soon be traversed by three great transcontinental routes, in addition to one now crossing the southern part of the Territory and one piercing its center. Our great mineral resources are actual and no longer problematical, and with these and our vast agricultural area and grazing area we are fitted for a great, prosperous, and stable Commonwealth, while the small percentage of illiteracy within our limits demonstrates that we shall be governed wisely and economically by ourselves. Our people, without regard to party affiliations, are ready and eager to assume and bear the additional burdens of statehood and to escape from the disadvantages of Territorial vassalage. We have witnessed the growth of three great Commonwealths bordering us on three sides, and are impatient to share with them the benefits of home rule.

Believing, then, that the people of Wyoming are fully equipped for statehood, this legislative assembly, one branch of which is Republican and the other Democratic, in the name and by the authority of the people of this Commonwealth, respectfully urges upon Congress the immediate admission of Wyoming as a State of the Federal Union.

Be it further resolved, That the governor be, and he is hereby, requested to forward a duly authenticated copy of these resolutions to the Delegate in Congress to the end that the same may be speedily laid before the Senate and the House of Representatives.

STEPHEN W. DOWNEY,
Speaker of the House.
GEORGE T. BECK,
President of the Council.

I hereby certify that this act originated in the house.

JOHN T. DAVID,
Chief Clerk.

UNITED STATES OF AMERICA, *Territory of Wyoming:*

CHEYENNE, *January* 28, 1890.

I do hereby certify that the annexed and foregoing copy of enrolled "house joint resolution No. 1" is a true and correct transcript of the original thereof, as filed in this office on the 28th day of January, 1890.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the Territory, the date first above written.

[SEAL.]

JOHN W. MELDRUM,
Secretary of Wyoming Territory.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report 39, Part 2.

ADMISSION OF WYOMING INTO THE UNION.

March 21, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Springer submitted the following as the

VIEWS OF THE MINORITY:

The undersigned members of the Committee on Territories can not agree with the majority of the committee in recommending the passage of the bill (H. R. 982) "to provide for the admission of the State of Wyoming into the Union, and for other purposes," without amendment; but they desire to submit certain amendments to said bill and to submit some reasons why such amendments should be adopted.

The convention which framed the constitution under which it is proposed to admit the Territory of Wyoming into the Union as a State had no legal sanction for its existence. The governor, without authority of Congress or of the Territorial legislature, issued a proclamation and invited the electors of the State to elect delegates to assemble in the city of Cheyenne, the capital of the Territory, for the purpose of forming a constitution to be submitted to the people for ratification or rejection. The proclamation for this convention was issued on the 3d day of June, 1889. The election was held on the second Monday of July, and the convention assembled at Cheyenne, the capital of the Territory, on the first Monday of September, and proceeded to formulate a constitution. The convention adjourned on the 30th day of September, and the election on the ratification of the constitution was held on the 5th day of November thereafter. Only thirty-five days intervened between the time the convention adjourned and the holding of the election on the constitution.

As stated by the majority of the committee, "the Territory of Wyoming is equal in area to the area of the States of Delaware, New Jersey, Kentucky, and New York." In many parts of the Territory the settlements are sparse and communication is difficult. Several days after the convention adjourned must have elapsed before any authenticated printed copy of the constitution could have been put in circulation; and in the limited time intervening between the submission and vote thereupon it was impossible for the people to have any correct idea of its provisions.

The convention should have consisted of fifty-five delegates; but it appears that only thirty-nine were present at the time the instrument was signed, several of the counties not having been represented at all in the convention.

The election for the ratification of the constitution having been held without authority of law, no person who voted illegally could have been prosecuted, and no election officer was liable in case of making fraudulent returns. While the election was conducted in a legal manner in most of the counties, yet in some parts we are advised that frauds were

perpetrated. The whole number of votes cast on the question of ratifying the constitution was 8,195, of which 6,272 were cast in favor of the constitution and 1,923 were cast against it. At the election for delegate in Congress, November, 1888, just one year prior to this election, there were cast in the aggregate for delegate in Congress 18,010 votes. This was the largest vote ever cast in the Territory. In 1886 the total vote for delegate was only 9,377; but in 1884 a larger vote was polled, namely, 12,820. The increase in the vote between 1884 and 1888 was 5,190. This increase shows about 1,297 votes each year on the average. Assuming a like gain between 1888 and 1889, there should have been 19,307 votes cast if all the voters in the Territory had voted at the time the constitution was submitted. Thus, it will be seen, that less than one-third of the voters of the State went to the polls November last and voted for this constitution. When we take into consideration the further fact that female suffrage prevailed at the time, it is reasonable to conclude that not exceeding 4,000 of the male voters of the State voted at the election in favor of the constitution; that is, assuming that all the females who voted, voted for the constitution.

The delegate from Wyoming in his statement before the Committee on Territories, claimed that the total vote at the State election next November (1890), would be at least 23,000. Assuming this to be true, it is manifestly unjust that a constitution should be forced upon the people of the proposed State which has received only 6,000 out of the 23,000 voters in the State. The undersigned are advised upon authority that they deem reliable that in many parts of the Territory the people took no part in the election, deeming the whole proceeding a farce. Several of the delegates who were elected did not appear in the convention at all and did not participate in the formation of the constitution. Some of the delegates remained a few days and then went home. The light vote polled on the question of adopting or rejecting the constitution shows clearly that little interest was manifested by the people in the result. The people were neither represented in the convention, nor did one-third of the legal voters participate in the ratification of the constitution. The majority report does not furnish a detailed statement of the votes cast in each county in the Territory, but the undersigned are advised that most of the votes cast were in two or three of the counties.

In one of the counties there was a special election held to fill a vacancy in the legislature. Much interest was felt in this election and a large vote was polled in that county. The undersigned are advised that in Newcastle, in the county of Crook, 300 votes were credited to that place at the election for the adoption of the constitution. In proof of the illegality of this vote your committee call attention to the following article, which appeared in the editorial columns of the Sundance Gazette, published in Crook County, Wyo., immediately after the election.

THE "BANNER TOWN" OF CROOK COUNTY.

One of the arguments used before the legislature in favor of Weston County is that Newcastle is the banner town of Crook County, and the 300-odd votes credited to Newcastle at the constitutional election are pointed to with great pride as proof of the assertion. We should think that that particular election would be given a wide berth, especially by Newcastlers. There was no election there on that day, but three persons, each of whom we could name, went into a back room and conducted a cigar-box election. No one else was present, and these men marked the tickets and dropped them into the slot of the cigar-box. How 7 votes came to be cast against the constitution arose from the fact that one of the parties, after nearly all the tickets had been cast, exclaimed, "I'm d—d tired of voting for the same man all the time; I'm going to vote for the other fellow." And he accordingly dropped in 7 votes with

"Yes" scratched out. The cigar-box, the ballots, and a tally-sheet giving the result, were sent here, the same canvassed at this point, and with the other, but bona-fide returns forwarded to Cheyenne, where they were duly recorded. And that is how Newcastle came to be the "banner town" of Crook County. The above particulars were related to us by one of the trio who conducted the cigar-box election, and a gentleman whose word is as good as gold. As there was no color of legality about the election in Crook County, the scheme was devised and carried out more in a spirit of levity than otherwise, and it was not thought the returns would be forwarded to Cheyenne and made a part of the record.

It will appear from this newspaper clipping that there was little regard paid to the character of this election, and whether any other frauds were perpetrated we are not advised, but it is undeniable that frauds might have been perpetrated without limit and no one could have been punished therefor.

The constitution of the proposed State of Wyoming contains very radical provisions in regard to female suffrage as well as other subjects. The third section of article 1 provides that the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatever other than individual incompetency. The article on suffrage, namely article 6, is very radical in its provisions. Section 1, of article 6, is as follows:

The rights of the citizens of the State of Wyoming to vote and hold office is not to be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy all civil, political, and religious rights and privileges:

SEC. 2. Every citizen of the United States of the age of twenty-one years and upward who has resided in the State or Territory one year, and in the county wherein such residence is located sixty days next preceding any election, shall be entitled to vote at such election except as herein otherwise provided.

Section 9 of this article is as follows:

No person shall have the right to vote who shall not be able to read the constitution of this State. The provisions of this section shall not apply to any person prevented by physical disability from complying with its requirements.

There is a radical difference between the proposed constitution of Wyoming and that of the proposed State of Idaho. In the Idaho constitution Mormons are practically prohibited from exercising the elective franchise; but in Wyoming, where there are many of this religious sect, not only the males may vote but their wives also may vote.

Without entering into a discussion at this time upon the propriety of abolishing legal distinctions between the sexes and admitting women to the elective franchise, the undersigned are of the opinion that the question is of so grave a character as to require most serious and candid deliberation before the adoption of a constitution containing such provisions. There is no State in the Union which contains such provisions in its constitution; nor is there a State or nation in the civilized world where women are permitted to hold office and to vote, except in a few instances relating to school offices. If any of the States of the Union, or proposed States, should determine to make this radical departure, it should not be done without the fairest opportunity for discussion and for participation in the election of the convention which frames the constitution and in the adoption of the instrument which contains such provision. In view of these facts, therefore, the undersigned are of the opinion that justice to those who are to live hereafter in the State of Wyoming requires that another convention should be held, called under the authority of an act of Congress, and due notice given to all, in order that all may participate in the election of delegates and also in the ratification of the constitution which may be submitted. The undersigned therefore recommend that sections 1 and 2 of the pending bill be stricken out, and that in lieu thereof the following provisions inserted, and that

the other sections be numbered accordingly. They also recommend that the preamble be stricken from the bill.

The sections which we propose to insert in lieu of sections 1 and 2, are as follows:

That the inhabitants of all that part of the area of the United States now constituting the Territory of Wyoming, as at present described, may become the State of Wyoming, as hereinafter provided.

SEC. 2. That all male persons who shall have resided within the limits of said proposed State for sixty days, and are otherwise qualified by the laws of said Territory to vote for representatives to the legislative assembly thereof, are hereby authorized to vote for and choose delegates to form a convention in said Territory; and the qualifications for delegates to such convention shall be such as, by the laws of said Territory, persons are required to possess to be eligible to the legislative assembly thereof; and the aforesaid delegates to form said convention shall be apportioned among the several counties within the limits of the proposed State, in proportion to the aggregate number of votes in each of said counties for delegate in Congress, at the election held in said Territory on the Tuesday next after the first Monday in November, eighteen hundred and eighty-eight. One delegate shall be allowed for every three hundred votes cast in each county, and one delegate for any fraction of one hundred and fifty votes cast in each county. That said apportionment shall be made by the governor, the chief-justice, and the United States attorney of said Territory; and the governor of said Territory shall, by proclamation, order an election of the delegates aforesaid in said Territory to be held on the Tuesday after the first Monday in June, eighteen hundred and ninety, which proclamation shall be issued within thirty days after the passage of this act; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said Territory regulating elections therein for delegate to Congress. All male persons resident in said proposed State, who are qualified voters of said Territory, as herein provided, shall be entitled to vote upon the election of delegates, and upon the ratification or rejection of the constitution, under such rules and regulation as said convention may prescribe, not in conflict with this act, but no educational qualification shall be required of voters at either of said elections.

SEC. 3. That the delegates to the convention thus elected shall meet at the seat of government of said Territory on the fourth day of July, eighteen hundred and ninety, and after organization, shall declare, on behalf of the people of said proposed State, that they adopt the Constitution of the United States; whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said proposed State. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide, by ordinance irrevocable without the consent of the United States and the people of said State:

First, that perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship;

Second, that the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the State shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as such act of Congress may prescribe;

Third, that the debts and liabilities of said Territory shall be assumed and paid by the said State; and

Fourth, that provision shall be made for the establishment and maintenance of a

system of public schools, which shall be open to all the children of said State and free from sectarian control.

SEC. 4. That in case a constitution and State government shall be formed in compliance with the provisions of this act, the convention forming the same shall provide by ordinance for submitting said constitution to the people of said State for their ratification or rejection, at an election to be held in said Territory on the Tuesday after the first Monday of November, eighteen hundred and ninety, at which election the qualified voters of said proposed State shall vote directly for or against the proposed constitution, and for or against any provisions separately submitted. The returns of said election shall be made to the secretary of said Territory, who, with the governor and chief-justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast on that question shall be for the constitution, the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitution and government of said proposed State are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of said election, and thereupon the proposed State of Wyoming shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation: *Provided*, That nothing contained in this act shall, in any wise, interfere with the right and ownership of the United States to the Yellowstone National Park reservation, and the exclusive control over the same by the United States.

It will be seen that these proposed amendments will provide for an election for delegates to the constitutional convention, for the holding of such convention, and for the submission of the constitution when framed to a vote of the people; and also the admission of the State into the Union under proclamation of the President as in the case of the two Dakotas, Montana, and Washington.

No unreasonable delay will be caused by this course. The constitutional convention will assemble on the 4th of July next, and the constitution will be submitted to the people at an election to be held on the first Tuesday in October. This will give ample opportunity for careful consideration of all the subjects which may be presented and enable the State, if the new constitution is adopted, to be represented by Senators and a Representative in the next session of the present Congress. The object of recommending this course is not for delay but in order that most careful consideration may be given both in the election of delegates and also in the voting upon the constitution and any articles that may be separately submitted in reference to suffrage shall be given the fullest and freest discussion. If, after such full discussion, the people of the proposed State are determined to retain the provision in reference to female suffrage and the eligibility of females to hold office, it will be a matter for them to determine; but we insist that the determination of the question should be deliberately and carefully considered. It will be observed that the amendment which we propose provides that every male citizen of the United States who is otherwise qualified by the laws of the Territory of Wyoming may participate in the election of delegates and on the adoption or rejection of the constitution, and that no educational qualification be required of voters at either of such elections.

If the foregoing amendments should be disagreed to by the House, the undersigned recommend the adoption of the following proviso to section 1 of the bill, namely:

Provided, That there shall be an election in the Territory of Wyoming on the Tuesday next after the first Monday in November, 1890, for a Representative in Congress to the Fifty-first and the Fifty-second Congresses, and for the State, judicial, and legislative offices whose terms of office are created by the proposed constitution of the State of Wyoming, and such county, precinct, and municipal officers as may be provided for under such constitution and under the laws of the Territory of Wyoming; but no county or township officers shall be elected unless their terms are about to ex-

pire under the laws of the Territory creating such offices. At said election every male citizen of the United States, who is otherwise qualified under the laws of the Territory of Wyoming to vote, may vote for such officers, and on the constitution, and separate propositions submitted, and no others, and said election shall be conducted and returns made and canvassed in the manner provided in the laws of said Territory for the election of the Delegate to Congress. At said election each qualified elector may have written or printed upon his ballot the words: "For the constitution," or "Against the constitution," and also the words, "For female suffrage," or "Against female suffrage." Also the words, "For eligibility of women to hold offices and sit on juries," or the words, "Against the eligibility of women to hold offices and sit on juries."

If at said election the majority of the legal votes cast shall be "for the constitution," the governor shall certify the result to the President of the United States, together with the votes cast thereon, and upon separate articles or propositions, and a copy of said constitution, articles, and propositions. It shall be the duty of the President of the United States, if it shall appear that a majority of all the votes cast at said election were in favor of the constitution, to issue his proclamation announcing the result of such election, and thereupon said State of Wyoming shall be deemed admitted by Congress into the Union under and by virtue of this act, on an equal footing with the original States from and after the date of said proclamation. And provided further, that if it shall appear that a majority of the legal votes cast at said election were against female suffrage, or against the eligibility of women to hold offices and sit on juries, then, in that event, the constitution of the said State of Wyoming shall be amended accordingly by virtue of such vote.

In case this second proposed amendment should be rejected by the House, the undersigned recommend a further amendment to the bill. Add to section 1 the following:

Provided, That the State of Wyoming shall not be admitted into the Union until the proposed constitution thereof shall be amended as follows:

First amendment: Strike out the first section of article 6, entitled "Suffrage," which section is in these words: "The right of the citizens of the State of Wyoming to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall equally enjoy all civil, political, and religious rights and privileges," and insert in lieu thereof the following:

"SECTION 1. The rights of the citizens of the State of Wyoming to vote or hold office shall not be denied or abridged on account of race, color, or previous condition of servitude. Both male and female citizens of this State shall equally enjoy all civil and religious rights and privileges."

Second amendment: Insert the word "male" after the word "every" and before the word "citizen" in the first line of section 2, of article 6, so that the section will read:

"SEC. 2. Every male citizen of the United States of the age of twenty-one years and upward who has resided in the State or Territory one year and in the county wherein such residence is located sixty days next preceding any election shall be entitled to vote at such election, except as herein otherwise provided: *And provided,* That there shall be an election in the proposed State of Wyoming on the Tuesday next after the first Mondayof November, eighteen hundred and ninety, for Representative in Congress for the Fifty-first and Fifty-second Congresses, for State, judicial, and legislative officers whose offices are created by the proposed constitution of the State of Wyoming and for such county, precinct, and municipal officers as may be provided for under the said constitution of the State and under the laws of the Territory of Wyoming; but no county or township officers shall be elected unless their election would take place under the provisions of the laws of the Territory of Wyoming at that time. At said election electors who may be qualified to vote as provided in article seven of said constitution as amended by this act, shall be permitted to vote and no other. And said election shall be conducted and returns made and canvassed in the manner provided in the laws of the Territory of Wyoming for the election of the Delegate in Congress from said Territory. At said election there may be written or printed on each ballot the words "For the amended constitution" or the words "Against the amended constitution." And if the majority of the legal votes cast on this question shall be for the amended constitution then the governor of the Territory shall certify the result to the President of the United States together with a statement of the votes cast thereon and a certified copy of the amended constitution; and it shall be the duty of the President of the United States upon the receipt of such statement of votes cast and copy of such amended constitution, if it shall appear that said amended constitution has been ratified by a majority of the legal votes cast on that question, to issue his proclamation announcing the result of the election thereon; and thereupon the State of Wyoming shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with

the original States from and after the date of such proclamation. *And provided further*, That no election shall be held in the Territory of Wyoming as provided in the ninth, tenth, eleventh, twelfth, and thirteenth sections of the schedule of the proposed constitution of the State of Wyoming; but in lieu of such election there shall be an election in said Territory as provided in the foregoing provisions of this act.

The undersigned do not desire to delay the admission of Wyoming into the Union at the earliest time practicable; but they insist that the admission of a State into the Federal Union should be after the most careful consideration by the people of the proposed State and also after mature deliberation by the Congress of the United States. No injustice can be done to the people of Wyoming by requiring this careful deliberation in the formation of a constitution. It will be observed that the largest vote ever polled in the Territory was at the election for Delegate in 1888, when a few votes over 18,000 were polled. If we assume that only one-third of these were women it will be seen that there are not over 12,000 male persons over the age of twenty-one in the proposed State. If we allow six inhabitants to one male voter it would give Wyoming at this time about 72,000 inhabitants; and it is more than likely that the population exceeds very little that number. A like estimate of population based upon the votes in New Mexico, which was 30,612 at the last election, would give a population in that Territory of 183,672. It is not, therefore, unreasonable to insist that Wyoming shall take the same course which the undersigned have recommended with regard to the Territory of New Mexico. They will then come into the Union at the same time, but in justice to New Mexico, if population and resources are to be considered, that Territory is entitled to first consideration and first admission.

The undersigned have not discussed in this paper the subject of female suffrage or the propriety of making women eligible to hold office and sit upon juries. The subject is not a new one; it has been discussed in this country and in all civilized countries during the past and will continue to be discussed. We invite the attention of the House to a very able article upon this subject published in the Forum for January over the signature of Prof. Goldwin Smith. No one can accuse this eminent writer of being wanting in a proper regard for the rights and interests of women. His article is hereunto appended and made a part of the views which the undersigned desire to submit. They also print in their appendix hereto a remonstrance against the further extension of suffrage to women, signed by distinguished citizens of Boston, and able articles by Mrs. Leonard and Adeline D. T. Whitney. The undersigned invite the attention of the members of this House to the very able articles referred to. The subject is worthy of the most serious consideration by Congress.

WILLIAM M. SPRINGER.
GEO. T. BARNES.
JOSEPH E. WASHINGTON.
C. H. MANSUR.
C. B. KILGORE.

APPENDIX 1.

WOMAN'S PLACE IN THE STATE.

Thirty years ago or more, in company with John Bright, the writer signed Mill's petition to the British Parliament in favor of the political enfranchisement of women. Both John Bright and he were led to this by their general prepossession in favor of any extension of human rights, combined with their respect for Mill. Both of them afterward changed their minds, and Bright became the most powerful opponent of female suffrage. The writer was led to revise his opinion by finding that those women whom he had always regarded as the best representatives of their sex among his acquaintance were by no means in favor of the change. A protest from some of the foremost women of England, which has recently appeared, confirms his impression, and at the same time relieves a male writer of the fear that he may be actuated by selfishness of sex in arguing against a female claim.

The agitation went on. Non-political franchises were granted to women. At one time they seemed on the point of grasping the political franchise, but then again the hope receded, and notwithstanding the tendency of the demagogic system, which is always to concession, because the politician fears to make an enemy of the coming vote, the balance seemed to incline against them; when the other day the leader of the Conservative party, to the astonishment and dismay of not a few among his followers, suddenly declared in favor of female suffrage. It has been said of Lord Salisbury, with not less truth than wit, that he *saute pour mieux reculer.* He is very apt to rush impetuously into positions from which he afterward finds it better to retire. On the occasion when he was hurried into this particular leap he was addressing an assembly of Primrose Dames, that is, female canvassers of the Conservative party, who are supposed, by bringing their personal influence and fascinations to bear on the lower class of voters, to have rendered great service to the party in the elections; and it may be surmised that his gallantry had not less to do than his statesmanship with the impulse to which he gave way.

Not that female suffrage is out of the line of Tory policy, as Tory policy is now understood by a portion of the Tory party. The strategy which Lord Beaconsfield practiced and with which he inoculated a section of his followers, was that which, instead of resisting the democratic extension of the suffrage, seeks to outbid and outflank it by enfranchising classes over which it is supposed the Crown, the aristocracy, and the church will be able to exercise a special influence. This is Tory democracy, and akin to it is Tory acceptance of female suffrage. Lord Beaconsfield himself was known to be favorable to the measure, though he never made it a plank in his platform, fearing probably that the bulk of his party was not educated up to the mark. It was his be-

lief, and is the belief of many Tories, that the women, under clerical or sentimental influences, would vote on the Tory side, and, especially, that their religious and ritualistic feeling would lead them to uphold the established church. Whether this belief would in the long run prove well founded, may be doubted, since in the bosom of the female politician Conservative sentiment would have a potent rival in revolutionary excitement, and while the Conservative women would be inclined to stay at home, the revolutionary women would always go to the poll. Such, however, is the game. It is the game of the Tory leader in Canada as well as in England. The Canadian Tory leader gives votes to the Indians because the Indian will follow the meal-bag; and he tries to give votes to the women because he thinks that the sex is Tory by nature, though in the last move he has hitherto not been able to carry the body of his followers with him. No great compliment is paid to woman by thus using her for the purposes of party tactics.

Lord Salisbury guarded his avowal by saying that he spoke for himself alone. But a leader of a party and a prime minister can not speak for himself alone. Mr. Gladstone, or whoever may be leader of the opposition, seeing Lord Salisbury bidding for the women's vote, is sure to bid against him, whatever his own convictions may hitherto have been. The demagogic system is a perpetual Dutch auction, the last bid in which it is difficult to foresee. Some are sanguine enough to think that America will have rest when a black woman has been elected President of the United States; but are they sure that when the barriers of sex and color have been broken through, a demagogic crusade will not commence against the limit of age? I have heard an English Radical say that "a vote is the right of every sentient being."

At present the franchise is sought in Great Britain only for unmarried women and widows. But evidently the movement will not stop there. It cannot logically or justly stop there. If the special interests of women and the home are to be represented, it is preposterous to exclude all those women who are actively discharging the proper functions of their sex, and all women who have a home. Nor is it intended that the movement should stop at spinster and widow franchise. Spinster and widow franchise is merely the thin end of the wedge, if indeed, considering that the claim of spinsters is less than that of married woman, it may not rather be called the thick end. The abolition of subordination in the family, of the authority, usurped or obsolete as radicals deem it, of its head, and of everything that tends to merge the civil personality of the wife in that of the husband, is the prime object at least of the extreme wing of the party, which would be achieved if man and wife could be seen fighting against each other at elections.

Since England has got loose from her old political moorings, and under the name and forms of a monarchy turned herself into the most unbridled of democracies, America has become the more conservative country of the two, and we seem farther from a great revolution in the relations between the sexes on this side of the water than they are on the other. Something may be due to the fact that, suffrage here being universal, and there being no proposal to limit the franchise to unmarried women, the change presents itself at once in its full magnitude. But more is due to the conservative instincts of the "territorial Democracy," and to the superior robustness of Republicans who have had a long tenure of political power. The American citizen, satisfied of his right, is not infected with that feeble facility of abdication which takes possession of the soul of tottering privilege and makes it yield at once to every clamorous demand. A great safeguard is furnished by the

necessity of submitting all constitutional amendments to the popular vote. The people are not trembling for their re-election; they are not afraid of making an enemy in advance of any possible "vote" of the future; nor can they be personally interviewed, wheedled, and bullied as the members of a legislature are.

In the last session of Congress, however, a committee of the Senate, of which Mr. Blair was chairman, reported favorably the resolution for a constitutional amendment enacting that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." The resolution assumes the existence of a right, thereby begging the whole question, as the committee seem partly aware. If there is a right, the denial or abridgment of it is, as a matter of course, a wrong.

According to one theory, the right has already been recognized by the fourteenth constitutional amendment; but, as the committee say, "the great misfortune of those who thus believe is that the Supreme Court holds just the contrary opinion." For holding the contrary opinion, the Supreme Court has had vials of wrath poured upon it; but, surely it had common sense upon its side. Nobody could imagine that the nation, in passing the fourteenth amendment, meant to introduce woman suffrage; and a court must be the slave of verbal technicalities indeed, if it can hold that, by the mere use of an unguarded phrase, a community has entrapped itself into a transfer of half the sovereign power, and a revolution in the relations between the sexes at the same time. English courts, upon an analogous appeal, decided in the same way, though in England the appellants were able, not only to show that the words of the law, as construed by them, were in their favor, but to cite the historical precedent of queens who in the Saxon times had sat in the Witenagemote.

The other ground on which the claim is made, and which, as the committee say, is not inconsistent with the legal ground, is that of natural right:

> The suffrage is a natural right inherent in all who are capable of exercising the political functions of citizenship; that is to say, who are capable of becoming component parts of the aggregate body of sovereigns in all governments which are republican in form.

To this the reply is, that what is essential to the republican form of government can be gathered only by induction from a survey of such republics as have existed; and that of all the republics which have existed, not one has given a share of the sovereign power or a part in government to women. It might have been thought that theories of natural right to the possession of political power had been buried in the grave of the political philosophers of the last century. That to which and to which alone every member of a community, whether man, woman, or child, whether white or black, whether above or below the age of twenty-one, has a right is good government, and such things as are necessary or conducive to it. We are thus thrown back on the practical question whether female suffrage is necessary or conducive to good government. Say the committee:

> Jefferson trembled when he remembered that God is just. Now woman, our equal, asks relief from her greater wrongs. We shall refuse them at our peril. God is still just. Jefferson's forebodings were but a glimpse of the terrible retribution which descended upon the people.

All this, and much more to the same effect, and equally full-bodied in style, proceeds on the assumption that every one has the same right to a share in the government which he or she has to immunity from the

worst kind of injustice; than which nothing can be less self-evident to the ordinary mind.

"In muscle," say the committee, "woman is inferior to man; but muscle has nothing to do with legislation or government. In intellect she is man's equal; in character she is by his own admission his superior, and constitutes the 'angelic' portion of humanity." Here, as throughout the report, and indeed in the whole discussion, the amatory somewhat intrudes upon the legislative. The question, however, is not whether the intellectual gifts of woman are equal in value to those of man, or whether her character compared with his is angelic, but whether her understanding and character are as well fitted as his for the special functions of politics and government. Neither the intellect of Newton nor the character of John Wesley would be disparaged by saying that they were not well fitted to command a fleet or to perform a surgical operation. If government requires a masculine understanding or temperament, and if the practical character by which political questions are likely to be best settled resides in the man, whose sphere is the world, rather than in the woman, whose sphere is home, that is a reason for preferring such government and legislation, quite independent of any invidious comparisons, whether intellectual or moral. Perfect equality may reign between two beings whose spheres are different, and who are the complements, not the competitors, of each other.

Muscle, the committee pass over as having nothing to do with the matter. But the fact is that muscle has a great deal to do with the matter. Why has the male sex alone made the laws? Because law, with whatever majesty we may invest it, is will, which, to give it effect, must be backed by force; and the force of the community is male. As Gail Hamilton quaintly but forcibly expressed it, "every ballot is a bullet." Muscle is the coarse foundation on which the most intellectual and august fabric of legislation rests. Divorce the law from the force of the community, and the law will become ineffectual. If the case of queens regnant is cited, the answer is that a queen regnant has the public force at her back. Suppose the women, when invested with political power, were to make the laws which they threaten to make in their own interest and against that of the man, would the men execute the law against themselves? We have seen extravagant proposals for increasing the severity of the penal code in all cases of offenses against women. Suppose any such proposal were carried by the female vote, would the men obediently inflict the penalties on each other? That the tendency of a State governed by women would be to arbitrary and sentimental legislation can hardly be doubted. Prohibitionism in its most extreme form would almost certainly carry the day. Possibly legislation against tobacco might follow. Would men obey, knowing that the law had no force behind it? If they did not, what but disregard of law and consequent confusion would ensue?

One of the ladies, whose evidence was taken by the committee, admits that in the days of force, when women needed the protection of man, male government may have been justifiable; but these, she says, are days of piping peace. Days of piping peace, when there are millions of men in arms, when armaments are being increased daily, and the hammer of military preparation is clanging in all the forges of war. It would be impossible to allow questions of peace and war to be decided by the women's vote. The women of France some years ago would probably have voted a war for the support of the temporal power of the Pope. The women of England might have voted intervention in favor of the Queen of Naples, by whose heroism their hearts were greatly

moved. In both cases the men would have refused to march or act, and government would have succumbed.

Power to elect implies power of being elected. Exclusion from the legislature and from political office, would be a grievance not less exasperating than the present exclusion from the polls. In England the leaders of the movement evidently look forward to full participation in public life. In fact, it may be suspected that here lies the chief motive power of the agitation. Yet the feelings of the sexes toward each other must have greatly changed before women can, like men, be held strictly responsible for the performance of official duty and punished for the breach of it. Even to criticise them as men are criticised would be offensive to sentiment. We saw it stated that lady principals of the city schools in New York, the other day, protested against the re-appointment of education commissioners of their own sex, on the ground of the noxious immunity from criticism which, through the gallantry of the men, female commissioners enjoyed.

The belief that women will impart their tenderness and purity to politics is surely somewhat simple. They are tender and pure because their sphere has hitherto been the home, which is the abode of tenderness and purity. Thrown into the arena of political strife, the "angels," if experience may be trusted, instead of imparting the angelic character to the male combatants, would be in danger of losing it themselves. In the desperate party conflict which has been raging in England, each party has put its women in requisition as canvassers on a large scale; and we are misinformed if the result has been the infusion of a more angelic character into the fray. "Corruption of the male suffrage," say the committee, "is already a well-nigh fatal disease." But what assurance have they that women, when exposed to the temptation, will not take bribes? What assurance have they that in regard to appointments to office women will be especially free from personal influence or more rigorous upholders than men of the principles of the civil service act? If we mistake not, the most trenchant attack upon the principles of that act, and the most open defense of public favoritism that we have read, was from the pen of a woman.

"Enfranchise women," says the report, "or this republic will steadily advance to the same destruction, the same ignoble and tragic catastrophe, which has engulfed the male republics of history." This seems to imply a new reading of history, according to which republics have owed their fall to their masculine character. The Greek republics were overwhelmed by the Macedonian monarchy, their surrender to which was assuredly not due to excess of masculine force. The Roman republic was converted by the vast extension of Roman conquest into a military empire. The city republicanism of the middle ages was crushed by the great monarchies. The short-lived commonwealth of England owed its overthrow to causes which certainly had nothing to do with sex. The Swiss republic, the American republics, the French republic still live, so do several constitutional monarchies, including Great Britain and her colonies, which are republics in all but name. It is true that these commonwealths, though, we may hope, less directly threatened with the wrath of heaven than the report assumes them to be, are yet not free from peril; but their peril apparently lies in the passions, the giddiness, the anarchical tendencies of the multitude, and would hardly be averted by opening another flood-gate and letting in all at once the full tide of feminine emotion.

Of female government we have no experience except in the cases of queens regnant and female viceroys. Without going through a tedious

list, we may safely say that there is not among these any example of such transcendent beneficence that the hope of reproducing it can warrant us in risking a great revolution. Queen Victoria is cited as a paragon of female government. The truth, as every one ought to know, is that she reigns but does not govern. As wearer of the crown she has social duties of an important kind, which since the death of her consort have never been performed, and the persistent neglect of which, in spite of faithful advice and warnings, have in the case of Ireland led to the most calamitous results. The Queen's life and merits have been domestic. In her "Journal" there are two references to public events, one to the Franco-German and the other to the Egyptian war. In the first the writer had a son-in-law; in the second, she had a son. Should the time ever come, as, with revolutionary forces of all kinds at work, is conceivable, when it may be necessary for the salvation of the country to adopt a policy involving some risk to the Crown, the sex of the sovereign may prove a serious misfortune, since it is impossible to give counsels involving any risk to a woman.

It does not follow, as the committee seem to assume, because women do not vote or take a direct part in politics, that their influence on government and legislation will be lost. It is already powerful, and nowhere more powerful than in the United States. There runs through all these arguments and denunciations the fallacious assumption that women are a class apart, excluded from the privileges which are enjoyed by the other classes. But women are not a class; they are a sex, identified in interest, bound up in affection, and living in the closest communion with the voting and governing sex, the character of which as mothers they have molded, and which is constantly permeated by their ideas and sentiments. The ballot is not the only suffrage or the only scepter. There are men who, from the special nature of their occupations or from indifference to party struggles, have hardly cast a vote in their lives, and who yet have exercised a marked influence on public opinion. Such men would probably find it difficult to understand the transcendent value attached to participation in active politics or to the possession of a vote. We have been told that unless women vote they cannot take any interest in public affairs, and even that they can not read history. Facts show that they can do both.

If women were really a class without votes, their class interest might suffer. But we repeat, and it is the very gist of the matter, that they are not a class but a sex. What special interest of women can be named which is in danger of suffering at the hands of a legislature composed of their husbands, sons, and brothers? What grievance is there, redress of which has been denied? It is reasonable to ask this question before we invoke a revolution. The only specific grievance within the power of legislation to remedy, mentioned by any of the ladies who give evidence, is that a woman is tried, it may be for infanticide, by a male jury. But have the innocent been convicted, or does any one wish the guilty to escape? It surely can not be doubted that male juries are lenient to women. It is not the woman who has difficulty in getting justice against the man, but the man who has difficulty in getting justice against the woman. Liberty of divorce, if the lack of it was once a subject of complaint, has now been conceded in measure so abundant that the statistics have become almost appalling, and women themselves are beginning to recoil. The separation of the wife's property from that of the husband is as complete, nay as jealous, as it can be, short of an absolute dissolution of the domestic partnership. Almost every sort of suffrage except the political has been conceded, or

is in process of concession. Women are being admitted to the professions, even to that of law; albeit justice, which would seem to be the main object, is not likely to be promoted by the addresses of female counsel to male juries, unless sex can be altogether eliminated, as some people appear to think that it may. Male universities are thrown open to women; and if the proportion of women who resort to them is small, this is due to the instinct of parents who prefer for their daughters female places of education. Woman has made her way to the smoking room and has mounted the bicycle. She began to adopt male attire, and nothing but her own taste stopped her. After all, Nature has made two sexes. Nobody thinks it a compliment to a man to be called effeminate; why should we think that to become masculine is the highest ideal of woman?

The complaint has been made, and is echoed in the evidence appended to the report, that women, compared with men, are underpaid in professions and trades. Economic relations are sometimes a good deal governed by custom, and it would be rash to affirm that upon women as new-comers in certain employments, custom has not borne hard. But in employments where their position is established, such as those of the singer, the musician, the novel-writer, the artist, or the milliner, women are not underpaid. Who is more overpaid, or, if managers speak the truth, more rapacious, than a prima donna? One element of value in labor must be the complete devotion of the laborer to the employment; and a woman, unless she has finally renounced marriage, can not be completely devoted to an employment, nor is she likely to rival male perfection in it. In truth, female labor which takes the woman away from her home and from her natural duties, which are those of the wife and mother, is a sad, and we may hope a transient, necessity of our present stage of civilization. But, at all events, every economist and every person of common sense knows that questions of wages must be settled by the market, and not by the legislature. If there were a female legislature, and it made laws requiring men to give for woman's work more than the men thought it worth, men would resist or evade compliance; and again law and government would fail. But this suggestion, and others which are akin to it, open to us a vista of the agitation which would be set on foot when the majority of the holders of political power were women, and politicians had begun to play for the woman's vote.

The report proclaims that "without the exercise of the inalienable natural right of suffrage, neither life, liberty, nor property can be secured." To the ordinary observer it appears not only that the lives, liberties, and properties of American women are secure, but that they are more secure, if anything, than those of the men; and that the attitude of men in the United States toward women is rather that of subjection than that of domination. In fact, if the epithet "slave," so lavishly used by every one who thinks that he has not the exact amount of power which he ought to have, is to be seriously applied to any one not in actual bondage, it will hardly be to a woman, who is being maintained, perhaps, in the height of luxury, by her husband's labor, and for whose comfort and convenience special arrangements are made wherever she goes. "Actual and practical slavery," which one of the ladies who give evidence declares to be the condition of woman without the ballot, has certainly in the case of the American slave disguised itself in very deceptive forms. "No one," says another lady, "has denied to women the right of burial, and in that one sad necessity of human life they stand on an equal footing with men." Such language seems to

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as was Milton on the same subject, though
tion. His disciples assure us that he had al
chisement; but of the exceeding bitterness
any one who judges by the visible relatio
other will deem his extreme overstatement
band, an explanation must apparently be
"Autobiography" discloses. The immense
in government from the participation of w
may in like manner be traced in part to th
had caused him to see a genius equal to t
a woman whose intellectual gifts, to cooler
be extraordinarily high.

Surely this hideous story of the injustic
man could never be repeated by any one wh
phy or imbued with the charities of history
been the slave or the toy of man, but his
ter. The relation between the sexes has b
very rough and imperfect world, where ea
joys and sorrows, of special hard

Afghanistan, where force continues to reign. If the Indian woman has had to carry the kit, the man has had for days together, perhaps fasting, to be tracking the deer. The grave in a backwoods burying place, where a pioneer and his wife rest together, after their life's struggle with the wilderness, is not a bad monument of the general history of the sexes. The union of those two people may not have been uncheckered, but nobody can doubt that on the whole they have been helps and comforts to each other. Man has too often been unkind to woman; man has not always been kind to man; woman has not always been kind to woman; nor has woman always been kind to man. The unkindness of man to woman has been of the coarser and more palpable; that of woman to man has been of the subtler but not less cruel kind. Of the advances made by woman, though uninvested with political power, in position and influence, there can be no doubt. Civilization has begun to be measured by the degree of her ascendancy, and this without reference to the manner in which she discharges her special duty to the community.

That the sex has its privileges in America, no woman, it is presumed, will deny. Do the woman's rights party expect to combine the prerogatives of both sexes, and to have equality and privilege too? For a time perhaps they might, while the ancient sentiment lingered; but the total change of relations would in the end bring a corresponding change of feeling. Chivalry depends on the acknowledged need of protection, and what is accorded to a gentle helpmate would not be accorded to a rival. Man would neither be inclined nor bound to treat with tenderness and forbearance the being who was fighting and jostling him in all his walks of life, wrangling with him in the law courts, wrestling with him on the stump, maneuvering against him in elections, haggling against him in Wall street, and perhaps encountering him on the race-course and in the betting ring. But when woman has lost her privilege, what will she be but a weaker man?

The framers of this report say nothing, and the advocates of the political enfranchisement of women generally say very little, about the probable effect of the change upon marriage and domestic relations. In truth, the enthusiasts of sexual revolution are usually little careful, sometimes they are even rather contemptuous, in their treatment of this part of the case. Mill, whose union with his wife was an ardent and philosophic friendship rather than an ordinary marriage, says comparatively little about children, and the writer has noticed the same omission in the speeches and writings of some other advocates of the cause. Yet surely this is not a point to be overlooked. If it were reasonable to draw a comparison between two things which are different in their uses and each of which is indispensable in its way, we might be inclined to agree with the Comtists, who prefer the family to the state. At all events, it may be said that the family might rebuild the state, while the state could never rebuild the family. Is the double life produced by the complete union of a married pair higher and better than the single life? Is wedded affection the greatest source of our virtue and of our happiness on earth? Are the permanence of marriage and the order of the household essential to the formation of character in the children? Then we ought at all events to see our way when we are dealing with these things. Hitherto the family has been a unit before the state; this has been a fundamental law of our social organization, and to repeal it is a grave step and one certainly fraught with serious consequences for good or evil. In the abstract, perhaps it may be said that a spiritual or moral union ought to survive

ample, as that of the anti-slavery agitat
gling against each other in the canvass
impaired affection by the hearth and pr
and united authority to their children?
drawn of such harmonious conflicts; but
they true at most with regard to any b
quiet times? We shall of course have f
women at all the conventions, and the
man when he marries takes on him the h
wife and family; he expects as his rewar
home. Make marriage too onerous and u
regard to property or in regard to the civ
will follow? License which the legislato
unless he can eradicate or subdue the mig
as some seem to think that they can. In a
be, what has been, the condition of woma

The report ends by saying that men can
the suffrage to women but the selfish one
half of the sovereign power. Selfishness i
edly be not only wickedness but folly. W
in the same measure for man, and ought not
One lady in her evidence warns Congress,
the wild enthusiasm of woman can be used
threatens in America a repetition of the sce
More terrible even than this menace is th
man's partner, and thereby a deeper inju
change ought to be proved good. Before
ment to woman, he ought to be satisfied
right himself. In an age of "flabby" sent
change, we have had enough of weak and
one of them we owe the catastrophe of th
deluge of calamity which has followed. T
force the law, the sovereign power cam
Let him see whether he can not make a ju
his wife and children as well as in his own
nation.

APPENDIX 2.

DISTINGUISHED CITIZENS OF BOSTON AGAINST FEMALE SUFFRAGE.

Senator Vest, of Missouri, presented in the United States Senate, January 25, 1887, the following protest against the further extension of suffrage to women:

To the honorable Senate and House of Representatives:

We, the undersigned, respectfully remonstrate against the further extension of suffrage to women.

H. P. Kidder.
O. W. Peabody.
R. M. Morse, jr.
Charles A. Welch.
Augustus Lowell.
Francis Parkman, LL. D.
Thomas Bailey Aldrich.
Edmund Dwight.
Charles H. Dalton.
Henry Lee.
W. Endicott, jr.
Samuel Wells.
Hon. John Lowell.
William G. Russell.
John C. Ropes.
Robert D. Smith.
George A. Gardner.
F. Haven, jr.
W. Powell Mason.
B. F. Stevens.
Charles Marsh.
Charles W. Eliot, president Harvard University.
Prof. C. F. Dunbar.
Prof. J. P. Cook.
Prof. J. Lovering.
Prof. W. W. Goodwin.
Prof. Francis Bowen.
Prof. Wolcott Gibbs.
Prof. F. J. Child.
Prof. John Trowbridge.
Prof. G. L. Goodale.
Prof. J. B. Greenough.
Prof. H. W. Torrey.
Prof. J. H. Thayer.
Prof. E. W. Gurney.
Justin Winsor.
H. W. Paine.
Hon. W. E. Russell.
James C. Fiske.
George Putnam.
C. A. Curtis.
T. Jefferson Coolidge.
T. K. Lothrop.
Augustus P. Loring.
W. F. Draper.
George Draper.
Francis Brooks.
Edward Brooks.
J. Randolph Coolidge.
J. Eliot Cabot.
Fred. Law Olmstead.
Charles S. Sargent.
C. A. Richardson.
Charles F. Shimmin.
Edward Bangs.
J. G. Freeman.
H. H. Coolidge.
David Hunt.
Alfred D. Hurd.
Edward I. Brown.
W. G. Saltonstall.
Thomas Weston, jr.
Rev. J. P. Bodfish, chancellor, Cathedral Holy Cross.
Rt. Rev. B. H. Paddock, bishop of Massachusetts.
Rev. Henry M. Dexter.
Rev. H. Brooke Herford.
Rev. O. B. Frothingham.
Rev. Ellis Wendell.
Rev. Geo. F. Staunton.
Rev. A. H. Heath.
Rev. W. H. Dowden.
Rev. J. B. Seabury.
Rev. C. Woodworth.
Rev. Leonard K. Storrs.
Rev. Howard N. Brown.
Rev. Edward J. Young.
Rev. Andrew P. Peabody.
Rev. George Z. Gray.
Rev. William Lawrence.
Rev. E. H. Hall.
Rev. Nicholas Hoppin.
Rev. David G. Haskins.
Rev. L. S. Crawford.
Rev. J. I. T. Coolidge.
Rev. Henry A. Hazen.
Rev. F. H. Hedge.
Rev. H. A. Parker.
Rev. Asa Bullard.
Rev. Alexander McKenzie.
Rev. J. F. Spaulding.
Rev. S. K. Lothrop.
Rev. E. Osborne, S. S. J. E.
Rev. Leighton Parks.
Rev. H. W. Foote.
Rev. Morton Dexter.
Rev. David H. Brewer.
Rev. Judson Smith.
Rev. L. W. Shearman.
Rev. Charles F. Dole.
Rev. George M. Boynton.
Rev. D. W. Waldron.
Rev. John A. Hamilton.
Rev. Isaac P. Langworthy.
Rev. E. K. Alden.
Rev. E. E. Strong.
Rev. M. D. Bisbee.
Rev. Oliver S. Dean.
Richard M. Hodges, M. D.
Henry J. Bigelow, M. D.
Charles D. Homans, M. D.
George H. Lyman, M. D.
John Dixwell, M. D.
R. M. Pulsifer.
Edward L. Beard.
Solomon Lincoln.
G. B. Haskell.
John Boyle O'Reilly.
Arlo Bates.
Horace P. Chandler.
George O. Shattuck.
Hon. Alexander H. Rice.
Henry Cabot Lodge.

Benj. Vaughan.
Charles F. Walcott.
J. B. Warner.
Walter Dearn.
S. H. Kennard.
E. Whitney.
W. P. P. Longfellow.

Arthur E. Thayer.
C. F. Choate.
Richard H. Dana.
O. D. Forbes.
Edward L. Gedding
William V. Hutchin
John L. Gardner.

APPENDIX 3.

WOMAN SUFFRAGE.

[Letter from Mrs. Clara T. Leonard.]

The following letter was read by Thornton K. Lothrop, esq., at the hearing before the legislative committee on woman suffrage, January 29, 1884:

The principal reasons assigned for giving suffrage to women are these:

That the right to vote is a natural and inherent right of which women are deprived by the tyranny of men.

That the fact that the majority of women do not wish for the right or privilege to vote is not a reason for depriving the minority of an inborn right.

That women are taxed but not represented, contrary to the principles of free government.

That society would gain by the participation of women in government, because women are purer and more conscientious than men, and especially that the cause of temperance would be promoted by women's votes.

Those women who are averse to female suffrage hold differing opinions on all these points, and are entitled to be heard fairly and without unjust reproach and contempt on the part of "suffragists," so called.

The right to vote is not an inherent right, but, like the right to hold land, is conferred upon individuals by general consent, with certain limitations, and for the general good of all.

It is as true to say that the earth was made for all its inhabitants, and that no man has a right to appropriate a portion of its surface, as to say that all persons have a right to participate in government. Many persons can be found to hold both these opinions. Experience has proved that the general good is promoted by ownership of the soil, with the resultant inducement to its improvement.

Voting is simply a mathematical test of strength. Uncivilized nations strive for mastery by physical combat, thus wasting life and resources. Enlightened societies agree to determine the relative strength of opposing parties by actual count. God has made women weaker than men, incapable of taking part in battles, indisposed to make riot and political disturbance.

The vote which, in the hand of a man, is a "possible bayonet," would not, when thrown by a woman, represent any physical power to enforce her will. If all the women in the State voted in one way, and all the men in the opposite one, the women, even if in the majority, would not carry the day, because the vote would not be an estimate of material

to do in all other public matters. In f
so long as the present state of opinion
for legislators will naturally consult th
own families and neighborhood and be
be no doubt that in this State, where w
have great influence, the ballot would
men if they desired it or generally appro
are taxed, it is true; so are minors, wit
say that either class is not represented.
ship and friendship cause the identity
What is good in a community for men i
sisters, daughters and friends. The laws
much in favor of women by exempting ur
from taxation; by allowing women, and
ment without paying a tax; by compell
wives, but exempting the wife, even wh
indigent husband; by making men liabl
vice versa. In the days of the American
complaint was that a whole people were t

To-day there is not a single interest of w
defended by men, not a subject in which
est in which she can not exert an influen
tional to her character and ability. It is
live not in a remote country, with separat
relations of family and neighborhood, and
to the other sex, who are fully and well rep
and neighbors in every locality. That wo
scientious than men, as a sex, is exceedin
politics. The faults of the sexes are dif
stitution and habits of life. Men are m
misdeeds, but any person who knows hum
ined it in its various phases knows that e
temptation and sin; that the human hea
without distinction of sex.

It seems certain that, were women adn
litical office, all the intrigues, corruption.
men in political life

our own cities. First, because there is in England a property qualification required to vote, which excludes the more ignorant and irresponsible classes, and makes women voters few and generally intelligent; secondly, because England is an old, conservative country, with much emigration and but little immigration.

Here is a constant influx of foreigners, illiterate, without love of our country or interest in, or knowledge of, the history of our liberties, to whom, after a short residence, we give a full share in our government. The result begins to be alarming—enormous taxation, purchasable votes, demagogism,—all these alarm the more thoughtful, and we are not yet sure of the end. It is a wise thought that the possible bayonet or ruder weapon in the hands of our new citizens would be even worse than the ballot, and our safer course is to give the immigrants a stake and interest in the government. But when we learn that on an average one thousand emigrants per week landed at the port of Boston in the past calendar year, is it not well to consider carefully how we double, and more than double, the popular vote, with all its dangers and its ingredients of ignorance and irresponsibility. Last of all, it must be considered that the lives of men and women are essentially different.

One sex lives in public, in constant conflict with the world; the other sex must live chiefly in private and domestic life, or the race will be without homes and gradually die out. If nearly one-half of the male voters of our State forego their duty or privilege, as is the fact, what proportion of women would exercise the suffrage? Probably a very small one. The heaviest vote would be in the cities, as now, and the ignorant and unfit women would be the ready prey of the unscrupulous demagogue. Women do not hold a position inferior to men. In this land they have the softer side of life—the best of everything. There are, of course, exceptions—individuals—whose struggle in life is hard, whose husbands and fathers are tyrants instead of protectors; so there are bad wives, and men ruined and disheartened by selfish, idle women.

The best work that a woman can do for the purifying of politics is by her influence over men, by the wise training of her children, by her intelligent, unselfish counsel to husband, brother, or friend, by a thorough knowledge and discussion of the needs of her community. Many laws on the statute books of our own and other States have been the work of women. More might be added.

It is the opinion of many of us that woman's power is greater without the ballot or possibility of office-holding for gain. When standing outside of politics she discusses great questions upon their merit. Much has been achieved by women in the anti-slavery cause, the temperance cause, the improvement of public and private charities, the reformation of criminals, all by intelligent discussion and influence upon men. Our legislators have been ready to listen to women and carry out their plans when well framed.

Women can do much useful public service upon boards of education, school committees, and public charities, and are beginning to do such work. It is of vital importance to the integrity of our charitable and educational administration that it be kept out of politics. Is it not well that we should have one sex who have no political ends to serve who can fill responsible positions of public trust? Voting alone can easily be exercised by women without rude contact, but to attain any political power women must affiliate themselves with men; because women will differ on public questions, must attend primary meetings and caucuses, will inevitably hold public office and strive for it; in short, women must enter the political arena. This result will be repulsive to a large por-

signed by the Creator to soften and

Senator Vest said of Mrs. Leonard, w
Senate, January 25, 1887:

I hold in my hand an argument against woma
in the United States, and well known to the
whose philanthropy, whose exertions in behalf o
have given her a national reputation. I refer
a distinguished lawyer, and whose words of th
of the public.

Senator Hoar, of Massachusetts, said

All that the Senator from Missouri has said
Leonard is true. I do not know her personally.
sonal friend, a lawyer of high standing and char
of her ability is proved better than by any othe
powerful letter which has just been read.

APPENDIX 4.

THE LAW OF WOMAN-LIFE.

[By Adeline D. T. Whitney.]

The external arguments on both sides the modern woman question have been pretty thoroughly presented and well argued. It seems needless to repeat or recombine them; but in one relation they have scarcely been handled with any direct purpose. Justice and expediency have been the points insisted on or contested. These have not gone back far enough; they have not touched the central fact, to set it forth in its force and finality. The fact is original and inherent, behind and at the root of the entire matter, with all its complication and circumstance. We have to ask a question to which it is the answer, and whose answer is that of the whole doubt and dispute.

What is the law of woman-life?

What was she made woman for, and not man?

Shall we look back to that old third chapter of Genesis?

When mankind had taken the knowledge and power of good and evil into their own hands through the mere earthly wisdom of the serpent; when the woman had had her hasty outside way and lead, according to the story, and woe had come of it, what was the sentence? And was it a penance, or a setting right, or a promise, or all three?

The serpent was first dealt with. The narrow policy, the keen cunning, the little immediate outlook, the expedient motive; all that was impersonated of temporary shift and outward prudence in mortal affairs, regardless of, or blind to, the everlasting issues; all, in short that represented material and temporal interest as a rule and order—and is not man's external administration upon the earth largely forced to be a legislation upon these principles and economies?—was disposed of with the few words, "I will put enmity between thee and the woman."

Was this punishment—as reflected upon the woman—or the power of a grand retrieval for her? Not to man, who had been led and who would be led again by the woman, was the commission of holy revenge intrusted; but henceforth, "I will set the woman against thee." Against the very principle and live prompting of evil, or of mere earthly purpose and motive. "Between thy seed and her seed." Your struggle with her shall be in and for the very life of the race. "It," her life brought forth, "shall bruise thy head," thy whole power, and plan, and insidious cunning; "and thou shalt bruise," shalt sting, torment, hinder, and trouble in the way and daily going, "his heel," his footstep. Thou, the subtle and creeping thing of the ground, shalt lurk after and threaten with crookedness and poison the ways of the men-children in their earth-toiling; the woman, the mother, shall turn upon thee for and in them and shall beat thee down!

shall be in the labor of the earth; the
material things shall be cross and tro
your sake." "In your sorrow you sha
life." Your need and struggle shall b
the ruling of them. "For your sake," t
inherit your true power, carry out wi
desire and need of the race, which wom
pleads to you.

And Adam bowed before the Lord's j
he answered anything to that; but he t
moment "called her name Eve, becau
living." Then and there was the divisio
say, was the empire given? Both were
divine and special work; man, by the str
woman, by the stress and sorrow of her
conception, making her truly the "mothe

At the beginning of human history, o
answer to our question: the law of wom
from the heart of things; the law of the
enfolding, shaping, bearing on and arou
wheel is the constitution of human power
the world when the nave shall leave its p
the felloe. Iron-rimmed for its busy revo
the life and strength of man; but the tem
within the soul of the woman, that she m
the axle, and quietly and invisibly origin
ward movement. "The spirit of the livi
and they can move no otherwise. "Whe
wheels went by them; and when the liv
from the earth the wheels were lifted up."
in his vision.

There can be no going forward without
pulse at the center; and in the organizati
the place and power of woman have been
the serpent or for the redeeming Christ, s
must achieve beforehand and at the hear
the race; she must be the mother

Take this for the starting point; it is the key.

Within, behind, antecedent to all result in action, are the place and office of the woman—by the law of woman-life. And all question of her deed and duty should be brought to this test. Is it of her own. interior, natural relation, putting her at her true advantage, harmonious with the key to which her life is set? I think this suffrage question must settle itself precisely upon this ground-principle, and that all argument should range conclusively around it. Judging so, we should find, I think, that not at the polls, where the last utterance of a people's voice is given—where the results of character, and conscience, and intelligence are shown—is her best and rightful work; on the contrary, that it is useless here, unless first done elsewhere. But where little children learn to think and speak—where men love and listen, and the word is forming—is the office she has to fill, the errand she has to do. The question is, can she do both? Is there need that she should do both? Does not the former and greater include the latter and less?

Hers are indeed the primary meetings; in her nursery, her home, and social circles; with other women, with young men, upon whose tone and character in her maturity her womanhood and motherhood join their beautiful and mighty influence; above all, among young girls—the "little women," to whom the ensign and commission are descending—is her undisputed power. Purify politics? Purify the sewers? But what if, first, the springs, and reservoirs, and conduits could be watched, guarded, filtered, and then the using be made clean and careful all through the homes; a better system devised and carried out for separating, neutralizing, destroying hurtful refuse? Then the poisonous gases might not be creeping back upon us through our enforced economies, our makeshifts and stop-gaps of outside legislation. For legislation is, after all, but cut-off, curb, and patch; an external, troublesome, partial, uncertain application of hindrance and remedy. What physician will work with lotion and plaster when he can touch, and control, and heal at the very seat of the disease.

It is the beginning of the fulfillment that women have waked to the consciousness that they have not as yet filled their full place in human life and affairs. Only has not the mistake been made of contending with and grappling results when causes were in their hands? Have they not let go the mainsprings to run after and effectually push with pins the refractory cogs upon the wheel rims?

Woman always deserts herself when she puts her life, and motive, and influence in mere outsides. Outsides of fashion and place, outsides of charm and apparel, outsides of work and ambition—she must learn that these are not her true showing; she must go back and put herself where God has called her to be with Himself, at the silent, holy inmost; then we shall feel, if not at once, yet surely sooner or some time, a new order beginning. He, the Father of all, gives it to us to be the motherhood. That is the great solving and upraising word; not limited to mere parentage, but the law of woman life. For good or for evil she mothers the world.

Not all are called to motherhood in the literal sense, but all are called to the great, true motherhood in some of its manifold trusts and obligations. "*Noblesse oblige;*" you can not lay it down. "More are the children of the desolate than of her who hath a husband." All the little children that are born must look to womanhood somewhere for mothering. Do they all get it? All the works and policies of men look back somewhere for a true "desire" toward and by which only they can rule. Is the desire of the woman of the home, the mother-

woman, are essential for every little
begin a life. When you remember th
born of a woman, trained—or needing
that of the little men, every one of wh
come at length the hand for the hel
arm to enfore law—what do you want
and control?

Which would you choose as a force
question of public moment, or as touc
through the general management—th
and cast one vote, or a hold beforehan
attention of each voter now qualified? T
argument, to show him the real point at
him of the right and lasting, instead o
way? This initial privilege is in the ha
she can be brought to feel and act as a
is claimed for her in the arguments for
political world.

But already and separately, if every in
can but reach one man, and influence him
from her interior preception of it, kept p
temptation that assail him in the outside
have done her work without the casting
comes of "taxation without representati
Eve can always plead with Adam, can
the last—if she knows what that first wo
its power with him—can beguile him to
as indeed she only meant to do in tha
Would it be any less easy to qualify for
convince and outnumber in public gather
the mass of women that will also have to
or overborne?

Preconceived opinions, minds made up
the pure good, you say? Women quite
of Paradise as in? That only returns
opportunity. Get the man to listen to
up—before his

mothering—to snatch from the evil that works over against pure womanliness. Until you have done this let men fend for themselves in rough outsides a little longer; except, perhaps, as wise, able women whom the trying transition time calls forth may find fit way and place for effort and protest—there is always room for that, and noble work has been and is being done, but do not rear a new generation of women to expect and desire charges and responsibilities reversive of their own life-law, through whose perfect fulfillment alone may the future clean place be made for all to work in.

Is there excess of female population? Can not all expect the direct rule of a home? Is not this exactly, perhaps, just now, for the more universal remedial mothering that in this age is the thing immediately needed? Let her who has no child seek where she can help the burdened mother of many; how she can best reach with influence, and wisdom, and cherishing, the greatest number—or most efficiently a few—of these dear, helpless, terrible little souls, who are to make, in a few years, a new social condition; a better and higher, happier and safer, or a lower, worse, bitterer, more desperately complicated and distressful one.

"Desire earnestly the best gifts," said St. Paul, after enumerating the gifts of teaching and prophecy and authority; "and I show you," he goes on, "a yet more excellent way." Charity—not mere alms, or toleration, or general benignity, out of a safe self-provision, but *caritas*—nearness, and caring, and loving—the very essence of mothering; the way to and hold of the heart of it all, the heart of the life of humanity. "Keep thy heart with all diligence; for out of it are the issues of life." That is the first word; it charges womanhood itself, which must be set utterly right before it can take hold to right the world. Here are at once task and mission and rewarding sway.

Woman has got off the track; she must see that first, and replace herself. We are mothering the world still, but we are mothering it, in a fearfully wide measure, all wrong.

Sacrifice is the beginning of all redemption. We must give up. We must even give up the wish and seeming to have a hand in things, that we may work unseen in the elements and make them fit and healthful; that daily bread and daily life may be sweet again in dear old homely ways, and plentiful with all truly blessed opportunities. We are not to organize the world, or to conquer it, or to queen it. We are just to take it again and mother it. If woman would begin that, search out the cradles—of life and character—and take care of the whole world of fifty years hence in taking care of them, calling upon men and the state when needful to authorize her action, and furnish outward means for it—I wonder what might come as earnest of good, even in this our day, in which we know not our visitation?

And here again some allowance and exception for what women can always do when this world-mothering forces an appeal to the strength and authority of man. Women have never been prevented from doing their real errands in the world, even outside the domestic boundary. They have defended their husbands' castles in the old chivalrous times, when the male chivalry was away at the crusades. They have headed armies when Heaven called them, only Heaven never called all the women at once; but when the king was crowned, the mission done, they have turned back with desire to their sheltered, gentle, unobtrusive life again. There has no business to be a standing army of women; not even a standing political army. Women have navigated and

called of God—not talks of them, as
do them—she carries a weight from
steps, as a woman, that moves men
power. Shall she resign the chanc
meeting grand-crises, by making hers
street corners, and abolishing the p
consecrating herself to it?

If individual woman, as has been s
vidual man, and so the man-power in a
such, with cause, and plea, and reaso
attention of bodies of men; but to d
from their home sanctities, as represe
them otherwise than men, because of
politicians, bred and hardened in the p

That the family is the heart of the s
the widened family, is the fact which th
and honor set forth and kept in mind.

The voice which has of late been so g
town, decisions as regarding public sch
ness of relegating to them certain inter
more than men, because—applying th
started—it has direct relation to and s
But can one help suggesting that if the
women, merely and directly, upon the co
saw that this work might be in great part
had asked and offered for the place wit
meeting, or putting in that wedge for the
been as readily done, and the objection, o

It is not the real opportunity, when th
line of her life-law, that is to be refused
from internal power to add to external co
to the friction of strife. Let us just tou
arguments concerning these external im
manding and the other entreating against

If voting is to be the chief power in won
of half the moment that is contended for it,
and end, the all-absorbing object

Think, simply, of election day for women.

Would it be so invariably easy a thing for a home-keeper to do, at the one opportunity of the year, or the four years, on a particular day, her duty in this matter? It is easy to say that it takes no more time than a hundred other things that some do; but setting apart all the argument that previous time and strength must have been spent in properly qualifying, how many of the hundred other things are done now without interruption, postponement, hindrance, through domestic contingencies? or are there a hundred other things done when the home contingencies are really met by a woman? A woman's life is not like a man's. That a man's life may be—that he may transact his out-door business; keep his hours and appointments; may cast his vote on election day; may represent wife and children in all wherein the community cares for, or might injure him and them—the woman, some woman, must be at the home post, that the home order may go on, from which he derives that command of time, and freedom from hindering necessities, which leave him to his work. And so, as the old proverb says, while man's work is from sun to sun—made definite, a matter to which he can go forth, and from which he can come in—a woman's work, of keeping the place of the forth-going and incoming, is never done, from the very nature and ceaseless importance of it.

Must she go to the polls, sick or well, baby or no baby, servant or no servant, strength or no strength, desire or no desire? If she have cook and housemaid they are to go also, and number her two to one, anyway; probably on election day, which they would make a holiday, they would —as at other crises, of birth, sickness, death, house-cleaning, which should occur in no first-class families—come down upon her with their appropriate *coup d'état*, and "leave;" making the State-stroke, in this instance, of scoring three votes, two dropped and one lost, for the irrepressible side.

How will it be when Norah, and Maggie, and Katie have not only their mass and confession, their Fourth of July and Christmas, their mission weeks, their social engagements and family plans, and their appointments with their dressmakers, to curtail your claims upon their bargained time and service, but their share in the primary meetings and caucuses, committees, and torch-light processions, and mass meetings? For what shall prevent the excitements, the pleasurings, the runnings hither and thither, that men delight in from following in the train of politics and parties with the common woman? Perhaps it may even be discovered, to the still further detriment of our already painfully hampered and perplexed domestic system, that the pursuit of fun, votes, offices, is more remunerative, as well as gentlewomanly—as Micawber might express it—than the cleansing of pots and pans, the weekly wash, or the watching of the roast. Perhaps in that enfranchised day there will be no Katies and Maggies, and the Norahs will know their place no more. Then the enlightened womanhood may have to begin at the foundation and glorify the kitchen again. And good enough for her, in the wide as well as primitive sense of the phrase, and a grand turn in the history that repeats itself toward the old, forgotten, peaceful side of the cycle it may be!

But the argument does not rest upon any such points as these. It rests upon the inside nature of a woman's work; upon the need there is to begin again to-day at the heart of things and make that right; upon the evident fact that this can be done none too soon or earnestly, if the community and the country are not to keep on in the broad way to a

threatened destruction; and upon the certainty that it can never be done unless it is done by woman, and with all of woman's might. Not by struggles for new and different place, but by the better, more loving, more intelligent, deep-seeing and deep-feeling filling of her own place, that none will dispute and none can take from her. We are not where woman was in the old brutal days that are so often quoted; and we shall not, need not, return to that. Christianity has disposed of that sort of argument. We are on a vantage ground for the doing of our real, essential work better than it has been done ever before in the history of the world; and we are madly leaving our work and our vantage together.

The great step made by woman was in the generation preceding this one of restlessness—the restlessness that has come through the first feeling of great power. It was made in the time when women learned physiology, that they might rear and nurse their families and help their neighborhoods understandingly; science, that they might teach and answer little children, and share the joy of knowledge that was spreading swiftly in the earth; political history and economy, that they might listen and talk to their brothers and husbands and sons, and leaven the life of the age as the bread in the mixing; business figures, rules, and principles, that they might sympathize, counsel, help, and prudentially work with and honestly strengthen the bread-winners. The good work was begun in the schools where girls were first told, as George B. Emerson used to tell us Boston girls, that we were learning everything he could teach us, in order to be women: wives, mothers, friends, social influencers, in the best and largest way possible. Women grew strong and capable under such instruction and motive. Are their daughters and grand-daughters about to leap the fence, leave their own realm-little cared for, or doomed to be—undertake the whole scheme of outside creation, or contest it with the men? Then, God help the men! God save the Commonwealth!

We are past the point already where homes are suffering or liable to suffer neglect or injury; they are already left unmade. Shall this go on? Between frivolities and ambitions, between social vanities and shows, and public meddlings and mixings—for where one woman is needed and doing really brave, true work, there are a hundred rushing forth for the mere sake of rushing—is the primitive home, the power of heaven upon earth to slip away from among us? Let us not build outsides which have no insides, let us not put a face upon things which has no reality behind it. Beware lest we make the confusion that we need the suffrage to help us unmake; lest we tear to pieces that we may patch again. Crazy patchwork that would be, indeed!

Are women's votes required because men will not legislate away evils that they do not heartily wish away? Is government corrupted because men desire shield and opportunity for dishonest speculation, authority and countenance for nefarious combinations? The more need to go to work at the beginning rather than to plunge into the pitch and be defiled; more need to make haste and educate a better generation of men, if it be so we can not, except *vi et armis*, influence the generation that is. But do you think that if women are in earnest—enough in earnest to give up, as they seem to be to demand—they might not bring their real power to bear even upon these evil things, in their root and inception, and even now? Suppose women would not live in houses or wear jewels and gowns that are bought for them out of wicked millions made upon the stock exchange.

Suppose they would stop decorating their dwellings to an agony,

crowding them hurriedly with this and that of the last and newest, just because it is last and new; making a show and rivalry of what is not a true-grown beauty of a home at all, but a mere meretriciousness; suppose they would so set to work and change society that displays and feastings, which use up at every separate one a year's comfortable support for a quiet, modest family, should be given up as vulgarities; that people should care for, and be ready for, a true interchange of life and thought, and simple, uncrowded opportunities for these; suppose women would say, "No; I will not blaze at Newport, or run through Europe dropping American eagles or English sovereigns after me like the trail of a comet or the crumbs that Hop-'o-my-thumb lets fall from his pocket that the people at home might track the way he had gone; because if I have money there is better work to be done with it; and I will not have the money that is made by gambling manipulations and cheats."

Do you think this would have no influence? More than that, and further back and lowlier down, suppose they should say, every one, "I will not have the new, convenient house, the fresh carpetings, the pretty curtains, or even the least most fitting freshness until I know the means are earned for me with honest service to the world, and by no lucky turn of even a small speculation." Further back yet, suppose them to declare, "I will not have the home at all, nor my own happiness, unless it can be based and builded on the kind of life-work that helps to make a real prosperity; that really goes to the building and safe-keeping of a whole nation of such homes." Would there be no power in that? Would it not be a kind of woman-suffrage to settle the very initials of all that ever bears upon the public question? And to bring that sort of woman on the stage, and to the front, is there not enough work to do, and enough "higher education" to insist on and secure?

After all, men work for women; or, if they think they do not, it would leave them but sorry satisfaction to abandon them to such existence as they could arrange without us. In blessed homes, or in scattered dissipations of show, amusement, or the worse which these shows and amusements are but terribly akin to, women give purpose to and direct the results of all men's work. If the false standards of living first urge them, until at length the horrible intoxication of the game itself drives them on further and deeper, are we less responsible for the last state of those men than for the first?

Do you say, if good women refused these things and tried for a simpler and truer living, there are plenty of bad ones who would take them anyhow, and supply the motive to deeper and more unmitigated evil? Ah, there come both answer and errand again. Raise the fallen —at least save the growing womanhood—stop the destruction that rushes accelerating on, before you challenge new difficulty and danger with an indiscriminate franchise. Are not these bad women the very "plenty" that would out-balance you at the polls if you persist in trying the "patch-and-plaster" remedy of suffrage and legislation?

Recognize the fact, the law, that your power, your high commission, is inward—vital—formative, and casual. Bring all questions of choice or duty to this test, will it work at the heart of things, among the realities and forces? Try your own life by this; remember that mere external is falsehood and death. The letter killeth. Give up all that is only of the appearance—or even chiefly so, in concious delight and motive—in person, surrounding, pursuit. Let your self-presentation,

your home-making and adorning, your social effort and interest, your occupation and use of talent, all shape and issue for the things that are essentially and integrally good, and that the world needs to have prevail. Until you can do this, and induce such doing, it is of little use to clamor for mere outward right, or to contend that it would be rightly applied.

Work as you will, and widely as you can, for schools, in associations, in everything whose end is to teach, enlighten, enlarge women, and so the world. Help and protect the industries of women; but keep those industries within the guiding law of woman-life. Do not throw down barriers that take down safeguards with them; that make threatening breaches in the very social structure. If women must serve in shops, demand and care for it that it shall be in a less mixed, a more shielded way than now. The great caravansaries of trade are perilous by their throng, publicity, and weariness. There used to be women's shops; choice places, where a woman's care and taste had ruled before the counters were spread; where women could quietly purchase things that were sure to be beautiful or of good service; there were not the tumult and ransacking that kill both shop girl and shopper now.

This is one instance, and but one, of the rescuing that ought to be attempted. There ought at least to be distinct women's departments, presided over by women of good, motherly tone and character, in the places of business which women so frequent, and where the thoughtful are aware of much that makes them tremble. And surely a great many of the girls and women who choose shop work because they like its excitement, ought rather to be in homes, rendering womanly service, and preparing to serve in homes of their own, leaving their present places to young men who might perhaps begin so to earn the homes to offer them. Will not this apply all the way up, into the arts and the professions even? There must needs be exceptional women, perhaps; there are, and will be, time and errand and place for them; but Heaven forbid that they should all become exceptional.

Once more, work for these things that are behind, and underlie; believing that woman's place is behind and within, not of repression, but of power; and that if she do not fill this place it will be empty; there will be no main spring. Meanwhile she will get her rights as she rises to them, and her defenses where she needs them; everything that helps, defends, uplifts the woman uplifts man and the whole fabric, and man has begun to find it out. If he "will give the suffrage if women want it," as is said, why shall he not as well give them the things that they want suffrage for and that they are capable of representing? Believe me, this work, and the representation which grows out of it, can no longer be done if we attempt the handling of political machinery—the making of platforms, the judging of candidates, the measuring and disputation of party plans and issues, and all the tortuous following up of public and personal political history.

Do you say, men have their individual work in the world, and all this besides and of it, and that therefore we may? Exactly here comes in again the law of the interior. Their work is "of it"—falls in the way. They rub against it as they go along. Men meet each other in the business thoroughfares, at the offices and the street corners; we are in the dear depths of home. We are with the little ones, of whom is not this kingdom, but the kingdom of heaven, which we, through them, may help to come. This is just where we must abandon our work, if we attempt the doing of theirs. And here is where our prestige will

desert us, whenever great cause calls us to speak from out our seclusions, and show men, from our insights and our place, the occasion and desire that look unto their rule. They will not listen then; they will remand us to the ballot-box.

"Inside politics" is a good word. That is just where woman ought to be, as she ought to be inside everything, insisting upon and implanting the truth and right that are to conquer. And she can not be inside and outside both. She can not do the mothering and the home-making, the watching and ministry, the earning and maintaining hold and privilege and motive influence behind and through the acts of men--and all the world-wide execution of act beside. Therefore, we say, do not give up the substance which you might seize, for the shadow which you could not hold fast if you were to seem to grasp it. Work on at the foundations. Insist on truth and right; put them into all your own life, taking all the beam out of your own eye before demanding—well, we will say the mote, for generosity's sake, and for the holy authority of the word—out of the brother's eyes.

Establish pure, honest, lovely things—things of good report—in the nurseries, the schools, the social circles where you reign, and the outside world and issue will take form and heed for themselves. The nation, of which the family is the root, will be made, and built, and saved accordingly. Every seed hath its own body. The seed of the woman shall bruise the serpent-head of evil, and shall rise triumphant to become the ennobled, recreated commonwealth. Then shall pour fourth the double pæan that thrills through the glorious final chorus of Schumann's Faust—men and women answering in antiphons—

The indescribable,
Here it is done;
The ever-womanly
Beckons us on!

Then shall Mary—the fulfilled, ennobled womanhood—sing her Magnificat; standing to receive from the Lord, and give the living word to the nations:

My soul doth magnify the Lord,
And my spirit hath rejoiced in God, my Saviour.
For he hath looked upon the low estate of His handmaiden;
For behold, from henceforth all generations shall call me blessed.
For He that is mighty hath done to me great things;
And holy is His name.
And His mercy is unto generations and generations.

The coming new version of the Old Testament gives us, we are told among other more perfect renderings, this one, which fitly utters charge and promise:

The Lord gave the word;
Great was the company
Of those
That published it.

The Lord giveth the word;
And the women that bring
Glad tidings
Are a great host.

ADELINE D. T. WHITNEY.

Senator Vest, when presenting the foregoing pamphlet to the Senate, January 25, 1887, said:

I now propose to read from a pamphlet sent to me by a lady whom I am not able to characterize as a resident of my State, although I believe she resides in the State of Maine. I do not know whether she be wife or mother. She signs this pamphlet as

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 40.

CATHARINE SAPP.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5849.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5849) granting a pension to Catherine Sapp, submit the following report:

That they find from the record in this case that the complainant is the widow of Charles Sapp, who enlisted in Company G, Thirty-fifth Regiment Illinois Volunteers, on the 20th day of September, 1861, and was discharged December 18, 1861. It is shown by several affidavits on file with the record and also with the committee that when the soldier enlisted he was a sound and healthy man and was subject to no disability.

It appears further from the testimony that on the march from southwest Missouri to Rolla the soldier became sick and was sent to the hospital at Rolla and afterwards to St. Louis, Mo. He was suffering from enlargement of liver, suppression of urine, and varicose veins of leg, and the soldier finally died of said diseases. The widow filed a claim for pension in the Pension Office, but the same was rejected for the reason that the cause of the soldier's death, acute meningitis of the brain, was not due to the soldier's military service.

Dr. Frazer testifies in the record that he was the family physician of the soldier from his return from the Army until the time of his death, in 1865; that during all this time he, the soldier, was troubled with varicose veins, which had to be frequently opened, and discharged large quantity of matter, and that these sores finally dried up, when the soldier was at once taken sick with meningitis of the upper spinal marrow, extending to the brain, caused by the drying up of the ulcers; that this was the cause of the soldier's death.

There is much other testimony in the record which tends strongly to support this theory of the case, and the committee find no testimony to the contrary, and are at a loss to know how the conclusion was reached that the death of the soldier was not due to his army service.

The committee are of the opinion that when the ulcers of the legs dried up, the disease went to the spinal column, and thence to the brain, which caused the death of the soldier. The widow is now quite old, past 84 years, poor, and unable to labor, and has no means of livelihood.

We recommend that the bill do pass.

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51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 41.

DANIEL DOTY.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LANE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4181.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4181) granting a pension to Daniel Doty, submit the following report:

The soldier enlisted December 3, 1861, and was discharged October 23, 1862, on surgeon's certificate of disability.

The affidavits of eight or ten credible witnesses are in the record, showing that when this soldier entered the Army he was a sound, healthy man, and none more so, and when he returned his health was greatly impaired. These facts are incontestable. It further appears from the evidence that at Camp Chase, Ohio, where he contracted a severe cold, which finally settled in his ear, and is also ruptured as the result of his service. The report of the examining surgeons show that his disability is three-fourths and his rating should be ten-eighteenths.

We recommend that this bill do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 42.

ANN BRYAN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5702.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5702) granting a pension to Ann Bryan, submit the following report:

That the Committee on Invalid Pensions of the Fiftieth Congress made a favorable report on this case, which report this committee adopt as their own, and which is as follows:

William Bryan, the soldier in this case, enlisted November 20, 1861, was discharged January 24, 1866, and died June 2, 1885.

The soldier drew a pension in his life-time for chronic diarrhea, and the widow made application for pension, which was rejected for the reason that chronic diarrhea was not the cause of the soldier's death.

The testimony in the record is abundant to show that the soldier contracted chronic diarrhea in the Army, and the granting to him of a pension is a confession on the part of the Government that he was so diseased, and the only question remaining is whether or not that was the cause of his death.

William Howell testifies that he knew the soldier for ten years prior to his death, that the soldier was affected with chronic diarrhea, that he was there on the day of his death, and that in his belief the cause of death was diarrhea.

John R. Murphy testifies that he knew the soldier for twenty years, that he had chronic diarrhea, and that was the cause of his death.

Other witnesses testify to the existence of chronic diarrhea in a severe form at the time of his death, that he was quite sick the evening before his death, and that he died suddenly at night.

There is no claim in the record that the soldier was affected with any other disease at the time of his death than that of chronic diarrhea, and the committee think it more reasonable to believe that the soldier died from this cause, for which he was pensioned, than to believe that he died from some disease with which he was not affected.

The widow is old, blind, and very poor, and the committee think that the testimony warrants the conclusion that the soldier died from chronic diarrhea, contracted in the service of his country, and the committee recommend that this bill do pass.

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Mr. LANE, from the Committee on Inva
lowing

REPOR

[To accompany bill H

The Committee on Invalid Pensions, t
bill, beg leave to report that they have
tion, and find that the Committee on In
Congress made a favorable report in this c
said report as their own, and which is in

That the claimant bases his claim for pension o
ice and in line of duty he contracted epileptic fit
His claim was refused by the Department on t
prior to enlistment. James M. Stout, being first
forty-two years; that his post-office is Auburn, Ill
the claimant intimately for several years before th
farm for two years, and that claimant and himself
that claimant was a very strong man, and that he
ponent further says that up to the time of his enlis
ness of any kind.

Alexander Orr, of Auburn, Ill., being duly sworn, s
that he knew the claimant five or six years before
for him on his farm; that he was a sound man phy
that he was one of the strongest men he ever knew
having epileptic fits until after the war.

Tobias Rudesill, being duly sworn, also testifies t
fore enlistment; that he lived on his brother's far
that he knew the claimant to be a sound, healthy
prior to his enlistment in the Army.

Thomas Wilson and T. N. Bryan, both physicia
that while the claimant was doing duty in the hosp
attacked and disabled by epileptic fits.

Dr. T. N. Bryan, examining surgeon, further stat
was incurred in line of duty.

A number of other affidavits on file in this case al
from epilepsy at the time of enlistment.

Your committee think that the testimony in this
that the claimant contracted his disability while
and is entitled to a pension

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 44.

WILLIAM V. CRONK.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2012.]

The Committee on Invalid Pensions, to whom was referred the above bill, beg leave to report that they have considered the same, and find that said bill was considered by the Committee on Invalid Pensions of last Congress and they made a favorable report thereon, which your committee adopt as their own and which is as follows:

The claimant, William V. Cronk, was enlisted September 1, 1861, and was discharged December 21, 1861. He bases his claim for pension on the ground that about October 13, 1861, while in the service, he contracted a cold which settled on his lungs, liver, and back, causing disease of said organs. The claim was refused by the Department on the ground that claimant's disability existed at the time of his enlistment.

James M. Rentfro testifies that he has known the claimant twenty-three years; that he enlisted with him in Company C, Thirty-fifth Illinois Volunteers; that at the time of his enlistment claimant was a sound, healthy man. Affiant further states that had the claimant been diseased prior to enlistment he would have known it because of his intimate acquaintance with him. Affiant testifies further that early in the winter of 1861 claimant was taken sick and removed to a hospital; that he complained of pain in his breast. He also states that he has known claimant since the war; that he never recovered, but has ever since been in feeble health.

John Lecrone, of Effingham, Ill., a physician in good standing of thirty years practice, testifies that he was the family physician of the claimant, and that he was a sound man at the time he enlisted in the service. He further says that since the war he has treated him for disease of the lungs and kidneys.

L. H. Williams testifies that he was a member of the same company with the claimant; that he was acquainted with him for twenty-one years, and that he was a healthy man at the time of enlistment. Deponent further states that about October 13, 1861, claimant was taken sick with lung and liver troubles; that he was sent to the hospital, where he remained until he was discharged.

Your committee conclude from the testimony in this case that the claimant's disability was contracted while in the service and in line of duty, and that he is entitled to a pension, and therefore respectfully recommended that the bill do pass.

Mr. LANE, from the Committee on In
lowin

REPO

[To accompany bill

The Committee on Invalid Pensions,
R. 4024) granting a pension to Daniel
report:

That the soldier enlisted on the 10th
G, One Hundred and Fifth Regiment, I
duly mustered into the service. The
soldier was wounded in what is known a
in 1863, in the knee, by gunshot wound
the disability, or that the injury was recei
and that his disability to perform manua
was rejected in the Pension Office for the
the soldier was attached was a State orga
States service, and that such injuries are
ing laws; but this Committee have freque
ably, and as this soldier was wounded
recommend that this bill do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 46.

EUGENIA A. HELSTON.

February 15, 1890.—Committed to the Committee of the Whole House, and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5486.]

The Committee on Invalid Pensions, to whom was referred the above bill, beg leave to report that they have considered the same, and find that the committee of this House at the last session made a favorable report on this bill, which report your committee adopt as their own, and which is as follows:

The Committee on Invalid Pensions, to whom was referred this bill, beg leave to report that they have considered the same, and find from the testimony filed with the committee that Joseph Helston, the husband of the claimant, entered the United States service in July, 1861, in the Second Illinois Cavalry, and served four years, three months, and sixteen days. He was not mustered into the service, for the reason that he was too young when he joined the regiment, and at Holly Springs, Miss., in 1862, he was wounded from a gunshot in the right leg, the ball ranging down and remaining in the leg. He was taken prisoner and paroled as a prisoner of war, and was afterwards placed in the army hospital.

After he joined his company he made application to be mustered into the service, as the evidence shows, but was refused for the reason of the wound aforesaid, and, as was claimed, was not fit for service: but notwithstanding this fact, he still remained and served with his command until the close of the war. Quincy McNeil Line, colonel of said regiment, swears that this soldier—

"Was not mustered into the service, that said Helston was particularly bright and active in his duties as a soldier, always on the alert to see what was wanted and seemed to take great pride in being a soldier. He bore arms and went with the company as a soldier, doing all the duties of a soldier."

Eli J. Heller, a comrade of the soldier, testifies to the same facts, and that said Helston was with the company until the close of the war. These facts are further proven by several other affidavits of comrades, so that there can be no question about these facts.

Dr. Sharp Field, a physician in good standing, testifies that he was in attendance on the soldier during his last illness, and that the soldier died February 18, 1884, of blood poisoning from a carbuncle located on the sacrum, complicated with a severe gunshot wound on the right leg below the knee, received in the United States service during the war. He further says that during the soldier's sickness his leg became violently inflamed and much swollen, and that, in the opinion of the physician, the said wound was the immediate cause of the death of the soldier.

John L. Card, a hospital nurse in the late war, testifies that he attended this soldier in his last illness as a nurse, and that he died from blood poison from a wound received in the Army while serving in the Army in the late war.

The committee find that the soldier served over four years in the Army; that he was wounded, and that his death is due to his military service, and the committee therefore report the bill back, with a recommendation that the same do pass.

Mr. LANE, from the Committee on Invali
lowing

REPORT

[To accompany bill H. I

The Committee on Invalid Pensions, to
(H. R. 2049), granting a pension to Jacob
ing report:

That the committee find that the Comm
the last Congress made a favorable report o
committee adopt as their own and which is

That claimant was a private in Company G, Two
Volunteers; enlisted August 23, 1864, and was dis
bases his claim for pension on the ground that he
the heart while in the service and in line of duty.
Department on the ground that no record of the alle
claimant is unable to furnish satisfactory evidence s
abilities at date of discharge or for several years ther

John T. Ensminger testifies that he was captain of
first Pennsylvania Volunteers; that claimant was a
he was acquainted with him prior to and at the time
was a perfectly sound man. Deponent further state
Bloody Run to look up bounty-jumpers and deserters
hard marching; that the winter was very severe an
posure; that during the whole time the claimant wa
in his tent suffering from piles and heart troubles; t
was treated by private physicians. Deponent furthe
said disabilities while in his company and in line of d

George W. Myers also testified that he was secon
that claimant was a perfectly sound man at the time
contracted his disabilities in line of duty. R. S. Ree
the same house with him, and they worked together
was a sound, healthy man. Deponent further testifie
he was sick and unable to work, and that he was tre
heart trouble.

Your committee think the evidence submitted in t
contracted his disabilities while in service and in lin
to a pension. And we therefore

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 48.

BARENT S. VAN BUREN.

February 15, 1890.—Committed to the Committee of the whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2057.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2057) granting a pension to Barent S. Van Buren, submit the following report:

That the committee find that the Committee on Invalid Pensions of the last Congress made a favorable report on this bill, which report your committee adopt as their own, and which is as follows:

The case of Barent S. Van Buren, formerly a musician of the Fourth Illinois Cavalry Volunteers (claim for invalid pension, No. 389982), was rejected by the Pension Office September 17, 1885, on the ground that the evidence on file in the case did not show that tumors of breast and thigh originated in the service and the line of duty.

The history of this case is as follows: Soldier, who was the son of Judge E. Van Buren, of Chicago, was a musician and joined the regiment composed of the Fourth Illinois Cavalry Volunteers in October, 1861; was discharged with the other members of the band at Cairo in the spring of 1862. The testimony on file in this case in the Pension Office goes to show that soldier contracted tumors of chest, abdomen, and thigh, on the march from Fort Henry to Fort Donelson, Tenn., in February, 1862. The weather was wet and cold, and the constant riding day and night and the constant exposure brought on sickness, which resulted in said tumors, which were hard and soft alternately and at times suppurated; always tender and troublesome.

These tumors existed at the date of discharge, in April, 1862, and Dr. Joseph W. Freer, who treated him immediately after arriving home, after discharge, for these tumors, is dead and soldier has been unable to furnish the testimony of a commissioned officer of the regiment as to the incurrence of his disability in the service, owing to the fact that the members of the band were not with the regiment when traversing the country from Fort Henry to Fort Donelson, Tenn.

He has furnished the testimony of the different members of the band who were with him at the time, and to whom he showed his tumors at Randolph Forges in February, 1862, after the ride across the country.

The testimony shows that he was a strong, healthy man when he enlisted, by parties who knew him. This is shown by several witnesses, and that he was afflicted as above set forth on his return from the Army. It is certain from the testimony on file that this man was sound and well when he enlisted, and it is equally certain that he was discharged because of his sickness which he contracted after his enlistment. It seems that by an equitable construction this claimant contracted this disability while in the service and in the line of duty.

Therefore the committee recommend that this bill do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 49.

WESLEY W. TAYLOR.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LANE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4414.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4414) granting a pension to Wesley W. Taylor, submit the following report:

The soldier in this case enlisted August 1, 1862, and was discharged from hospital on surgeon's certificate of disability February 5, 1863.

Application for pension was made March, 1880, for disability of right arm and left eye, contracted in Tennessee in December, 1862. The record in this case is quite voluminous, and it shows that the soldier went through the medical mill of the Bureau four times at four different places. After a special examination the claim was rejected December 14, 1886, on the ground of "no record and no competent testimony showing origin or existence in the service," and on appeal this ruling was affirmed by the Department.

Charles Newcomb, a neighbor of the soldier, testifies that he knew him before he enlisted and that he was a sound and able-bodied man when he volunteered; and that his right arm and left eye are seriously affected; and that they were when he returned home from the Army discharged for disability, and has so continued ever since. This statement is substantially sustained by the testimony of seven or eight other witnesses; some of them further stating that the soldier had spotted fever and that they helped to load him on a wagon and he was so taken to the hospital while in the Army.

Daniel H. H. Hurtson, a comrade, testifies that the soldier was a healthy man when he went into the service, and on December 8, 1862, at or near LaVergne, Tenn., the soldier was stricken down with disease and that he helped to load the soldier on a wagon and he was sent to the hospital at Nashville, Tenn., and that since his return home he has been affected in his right arm and left eye, and that the soldier is unfit to perform manual labor.

It is impossible to give a full abstract of the testimony in this case, and the committee must content itself by saying that the testimony is incontestable that this man was sound and healthy when he went into the Army. He was very sick in the Army with spotted fever or cerebro spinal meningitis, or something akin to it, and was discharged from the Army for disability. This, it seems to us, makes at least a prima facie case.

It is attempted to show that after he come home he was able to do some work, and in fact did some service in the recruiting service for the Government, and in fact this is sworn to by some witnesses; but no other sickness is shown at any time as to this soldier, and there is no dispute that he is now totally unfit for manual labor, because of the loss of the use of the right arm, and we think that it is not unreasonable to conclude that his disabilities are due to his Army service, and unless he is placed on the pension roll he must be supported by charity or placed in the almshouse.

We recommend that the bill do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 50.

WILLIAM CARROLL.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3228.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3228) granting a pension to William Carroll, submit the following report:

The committee find that this bill had been considered by the Committee on Invalid Pensions of the last Congress and made a favorable report thereon, which report this committee adopts as their own and is as follows:

Said Carroll was enrolled on October 5, 1861, and mustered out July 27, 1865, with his company. He enlisted at the age of seventeen years in a strange command, and his claim has been rejected by the Pension Department because he is unable to furnish evidence proving the incurrence of his disability—disease of lungs and deafness in right ear.

He states under oath that he contracted lung disease and deafness in the Shenandoah Valley, Va., in September, 1864, as a result of hard marching and continuous exposure. He states under oath that he was never treated while in the service for either of these diseases, and that he is unable to furnish evidence of comrades. He says:

"I did not complain to any one when I became afflicted; was marching when lungs began to hurt me. I began falling back, with the intention of dropping out, when I heard the surgeon of my regiment cursing those who were falling out of ranks, charging them with cowardice, and then I resolved to go on. I was in the act of reporting to the surgeon when I heard him cursing those who fell out of ranks."

This claimant furnishes ample evidence of soundness at time of enlistment and evidence of neighbors that he was afflicted with lung trouble in a very short time after leaving the service, and that as early as 1867 he was treated for this disease.

The medical board rate his disabilities as total.

Owing to the fact that this applicant was very young when he went into the service, and that he has not resided in the neighborhood or State from which he enlisted since his discharge, your committee believe he should be given the benefit of the doubt, if any exists, as to his incurring the disease in the line of duty, and recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 51.

GEORGE FAULK.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4904.]

The Committee on Invalid Pensions, to whom was referred the above bill, beg leave to report that they have considered the same and find that said bill passed the Senate at the Forty-ninth Congress at its first session, and your committee adopt the Senate report as their own, which is as follows:

The records in this case show the claimant enlisted October 9, 1862, and was sent to Camp Cleveland, Ohio, where claimant did all the duties assigned him, until about January 12, 1863, when he contracted inflammation of the lungs, and was so seriously sick that when the mustering officer came he would not muster claimant into the service, and he was discharged.

The affidavit of his commanding officer states that claimant was a rugged man from the time of his enlistment until he was taken sick in January.

Declarature for pension filed August 23, 1884, alleging disease of lungs, hemorrhage, and dizziness or fits, and general debility. Claim rejected on the ground that claimant was a rejected recruit and never in the service of the United States.

The testimony is to the effect that claimant was sound and rugged prior to enlistment, and that the disease which has permanently disabled him was incurred while the regiment was waiting to be mustered into the United States service. Had claimant been mustered in the day he enlisted, and then have incurred the disabilities proven, he would have been entitled to pension from the Pension Office; that he was not mustered in was no fault of claimant, as he waited from October 5, 1862, until January, 1863, in camp, doing all the duties assigned, and waiting to be mustered in.

The certificate of the examining surgeons of the Pension Office, dated September 24, 1884, states that the claimant has a serious disease of the heart, and rates his disability total.

Taking into consideration all the evidence on file in this case, the committee believe it to be their duty to report in favor of this bill and recommend its passage.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 52.

MANUEL GARCIA.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LANE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3535.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3535) granting a pension to Manuel Garcia, submit the following report:

That the committee find that the Committee on Invalid Pensions of last Congress made a favorable report on this bill, which report this committee adopt as their own and which is in the following language:

Claimant was a private in Company I, Eighth New Jersey Volunteers; he enlisted August 6, 1864, and was discharged July 2, 1865.

The reason a pension was not granted by the Department is that there is no testimony to show origin in line of duty, or to show condition at discharge, or prior to 1870, and no medical testimony. Claimant states that he is unable to furnish testimony as to his physical condition prior to enlistment for the reason that he was at sea for seven years prior to his enlistment; that he came into port on the 5th of August, 1864, and enlisted on the 6th of August, 1864; that he was examined by Edgar Holden, Government surgeon, and passed into the service of the United States.

William W. Lamb, of Philadelphia, Pa., a physician in good standing, being sworn, says—

"That he did not know the claimant prior to enlistment; but that he knew of his being taken sick while in the intrenchments in front of Petersburgh, Va. That he treated him for rheumatism and varicosed condition of limbs. That while lying in camp in the rear of Alexandria, Va., the intense heat produced inflammation of eyelids. That claimant was then sent to the hospital and he saw no more of him up to the present time."

J. B. Davison, a physician, testifies—

"That he examined claimant in 1866; that he found the veins of the legs in a varicose condition; that he found the second toe on the left foot stiff and useless."

Edwin H. Hollister and Reuben G. Hollister, of Coe, Rock Island County, Ill., being duly sworn, testify—

"That they have known the claimant for five years; that he worked for them; that his eye-sight was poor and from some cause he was very awkward with his legs, and that from their own personal knowledge he could not do more than one-half a man's work."

As the claimant was examined by Edgar Holden, a Government surgeon, and passed as physically sound, and in absence of testimony to the contrary we assume that he was a sound man when admitted into the service. And the other testimony proves that he was taken sick in the service and was treated for rheumatism and varicose veins and inflamed eyes, and that from said causes he has been continuously disabled ever since. Your committee conclude from these facts that the claimant was disabled in the service and is entitled to a pension, and therefore respectfully recommend the passage of this bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 53.

MARGARET J. FLETCHER.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3221.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3221) granting a pension to Margaret J. Fletcher, submit the following report:

The evidence on file with your committee shows that the claimant was a nurse in the United States Army in the Eightieth Regiment Illinois Volunteers, in the regimental hospital at Lebanon, Ky., and afterwards at Louisville, Ky., and was thus assigned to said hospitals as such nurse by the regimental surgeon; that she was a very faithful nurse, and remained in the service for about two years.

The sworn testimony shows that at the battle of Perryville she was on the battle-field in person and cared for the wounded, and even went so far as to tear her own underclothing from her body and used the same for bandages for the wounded during the battle; that she was very much exposed at this battle, and that because of her army service her health is broken down, she is affected with rheumatism, and has been in poor health ever since; that she is now old and very feeble, has no means of support but her own labor, and she is not able to labor now because of her advanced age and poor health.

The committee report the bill back with a recommendation that the same do pass.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 54.

JANE POTTS.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LANE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4247.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4247) granting a pension to Jane Potts, submit the following report:

The committee find that the Committee on Invalid Pensions of the last Congress made a favorable report on this bill, which report this committee adopts as their own and is as follows:

The Department refused her claim for pension on the ground that the soldier's insanity which caused suicide was not brought on by military service; that for about fifteen years after discharge he conducted his business affairs in a successful manner, and it is not believed that the insanity, developed about 1881, can be traced to his hardships as a prisoner of war.

Nealy C. Woods testifies that—

"He was orderly sergeant of Company D, Seventh Illinois Cavalry Volunteers; that he was well acquainted with Noah Potts; that they were members of the same company, and that he knew him intimately; that at the time of his enlistment he was a sound, able-bodied man, and free from disease of any kind; that he was taken prisoner at Collierville, Tenn., in the latter part of 1863, and was confined in Andersonville prison; that he saw him soon after his discharge from prison and he was a mere skeleton on account of hardships he had endured; heard soldier say that he believed his bones were rotten. Affiant further states that he noticed during the conversation that his mind was affected, and that his memory failed him very much."

J. B. Hendricks testifies that he belonged to the same company with the soldier.

"That at the time of his enlistment he was in perfect health; that he saw him after the war, and he thought he acted strangely; that his mind dwelt on his imprisonment, and it was difficult to draw it to any other subject, and that he was very absent-minded."

Henry P. Mashier, also a member of said company, testifies that he was well acquainted with soldier.

"That he has known him from boyhood; and that up to the time of his enlistment he was a healthy, able-bodied man and of sound mind. That he saw him after his discharge from prison and he was much broken in health, and that his conversation, appearance, and actions satisfied affiant that his mind was very much impaired."

Other affidavits in this case set forth the same facts as the above; and while there is some testimony to the effect that the soldier's insanity was hereditary, the great majority of evidence goes to show that his insanity was due to his long confinement in Andersonville prison.

Your committee therefore conclude that the soldier's insanity was due to hardships incurred while in the service and that his widow is entitled to a pension, and we therefore respectfully recommend that this bill do pass.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 55.

ANNA HAARSTICK.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LANE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2014.]

The Committee on Invalid Pensions, to whom was referred the above bill, beg leave to report that they have had the same under consideration and find that the Committee on Invalid Pensions of the last Congress made a favorable report in this case, and your committee have adopted said report as their own, and which is in the following language:

The committee have considered the same, and find from the evidence that the soldier William Haarstick, at the time of his death, was drawing a pension for gunshot wound of left thumb and disease of heart; that he was a private in Company A, First Regiment Missouri Volunteer Cavalry, and was wounded April, 1862, and discharged September 19, 1864.

The claim of the widow for a pension was rejected by the Department of Pensions for the reason that the death-cause was not due to the service of the soldier in the Army. The certificate of the physician who attended the soldier in his last illness is to the effect that the death-cause of the soldier was pneumonia, but there is filed with the committee the affidavits of three physicians who attended the deceased at various times for the last seven or eight years before the soldier's death for the heart disease contracted in the Army, and for which he was drawing a pension. And some of the witnesses state that he was so affected with heart disease that he fell down at times from this heart trouble. And another one of the physicians states that the death-cause was due to his Army service as a result of heart disease. He was sick in this way for many years, and was only affected with pneumonia for eight days, and it was but a slight attack, and the testimony to a reasonable certainty warrants the conclusion that if it was not for the heart disease he would have recovered from this slight attack of pneumonia, but because of his long illness from heart disease and his reduced condition he was unable to withstand the disease, and the committee are of the opinion that the death of the soldier was due to his Army service, and therefore report the bill back, with a recommendation that the bill do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 56.

SUSANNA MITTS.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2011.]

The Committee on Invalid Pensions, to whom was referred the above claim, beg leave to report that they have had the same under consideration and find that this case was reported favorably by the Committee on Invalid Pensions of the last session of Congress, and your committee have adopted the report of said committee as their own, which is in the following language:

James H. Mitts enlisted September 15, 1861, in Company F, Sixth Regiment Missouri Infantry, and was honorably discharged May 29, 1865. The reason said claim was not granted by the Department is, the records show that soldier was absent from his command at the time he was made prisoner.

Ira Boutell testifies that he has known soldier many years; that he was a member of his company; that at the time of his enlistment he was a sound, healthy man; that at Tipton, Mo., he was furloughed to go home with the measles; that during the campaign about Vicksburg he was taken prisoner, and had a severe trial in the prison-pens of the South; that soldier contracted disease of lungs and chronic diarrhea, which ultimately caused his death.

A. Lawler also testifies that he served in the same company with the deceased soldier; that he was taken prisoner with him; that at the time of his enlistment he was a sound healthy man; that during the time of his imprisonment his health began to fail him, and that he never afterward recovered; that he was always afflicted with a cough; that after he returned to regiment he never performed hard duty; that since the war he was a near neighbor of said soldier; that for some time before his death he was totally disabled on account of said disabilities contracted while a prisoner of war.

Your committee believe from this testimony that James H. Mitts contracted lung disease and chronic diarrhea, which eventually caused his death, while in service and in line of duty, and that Susanna Mitts, widow of said soldier, is entitled to a pension, and we therefore respectfully recommend that the bill do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 57.

JOHN DEBART.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1282.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1282) granting a pension to John Debart, submit the following report:

That said John Debart is the invalid son of Daniel Debart, deceased, and was on the pension roll until about a year ago, when he was dropped from the roll for the reason that he was over age. It appears further that said John Debart is a simple-minded person now under conservatorship, and is idiotic and will never recover, and has no means for support or friends able to care for him.

We therefore recommend that the bill do pass, with an amendment as follows: After the word "life" in the eighth line of said bill add as follows: "Said pension to be paid to the conservator or legally appointed guardian of said John Debart," also by striking out the word "twenty," in the seventh line and insert in lieu thereof "eighteen," and as so amended that the same do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 58.

ISAIAH HUMRICHOUSER.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4021.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4021) granting an increase of pension to Isaiah Humrichouser, submit the following report:

The committee find that this soldier was first placed on the pension-roll at $15, afterward increased to $18, then to $24, and that he is now receiving $50 per month. This soldier was shot in the face and left thigh, and now because of his army service is totally disabled, requiring the constant attendance of another person. In addition to this the soldier is now insane as the result of his army service and is in the insane asylum at Kankakee, Ill., completely disabled at the present time from doing anything for himself or his family.

Application was made to increase this pension of $50 per month in the Pension Office to $72, but it was refused on the ground that the soldier became insane since June 16, 1880.

If he had been insane before that date he would receive the sum of $72 per month, the amount asked for by this bill, but this relief could not be granted in the Pension Office, hence this application for an increase. The committee are of the opinion that it then was a mistake made in the passage of this law and there is no good reason why a person who becomes insane and totally helpless because of his army service prior to June 16, 1880, and whose name was not on the pension-roll should be treated with more consideration than a soldier under like circumstances who became insane and totally helpless requiring the constant attendance of another person, due to his army service, since June 16, 1880, and was not on the army roll, and that in both cases they should be treated alike.

We therefore recommend that the increase in this case be granted, and that the bill do pass with an amendment as follows: Add after the word "Infantry," in the sixth line, the following words: "Which pension of $72 shall be in full of any pension now paid said soldier, and that said pension be paid to the legally appointed guardian or conservator of said soldier."

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 59.

DANIEL M. MAULDING.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LANE, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3252.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3225) granting an increase of pension to Daniel M. Maulding, submit the following report:

The committtee find that a committee of the Senate of the last Congress made a favorable report on this case, which report this committee adopt as their own, as follows:

"The Committee on Invalid Pensions, to whom was referred the bill (H. R. 717) granting an increase of pension to Daniel M. Maulding, late captain of Company H, Sixth Illinois Cavalry, submit the following report:

"It appears that about October 15, 1864, Captain Maulding, while in pursuit of the enemy, near Waynesburgh, Tenn., was thrown from his horse, his foot catching in the stirrup and dragging him some distance, from which hurt resulted hernia or rupture of the right side.

"The claimant is now drawing $20 per month, but as his disability is 'total,' from the testimony of all the examining boards, and his hernia is not reducible, as shown by the testimony from not only the medical boards but from several other reputable physicians, the committee believe the increase should be granted. While the evidence is not all clear that the hernia is complicated, Dr. M. C. Dale, a reputable physician and surgeon of Hamilton County, Ill., swears that the hernia is complicated, and he is corroborated in this by Dr. V. S. Benson, of McLeansborough, Ill. These physicians both testify that Captain Maulding's disability is equal to the loss of a hand or a foot."

The bill is reported with an amendment striking out all after the word "at" in line 7, and inserting "the rate of $30 per month in lieu of the pension he is now receiving," with a recommendation that it do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 60.

MARY C. UPTON.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4180.]

The Committee on Invalid Pensions have had the above bill under consideration and beg leave to make the following report thereon:

The committee find from affidavits on file in their possession that Mary C. Upton was assigned by Thomas J. Riggs, surgeon of the Seventh Regiment, Illinois Cavalry Volunteers, in the late war, as nurse in the regimental hospital of said regiment, and that she served in the capacity as such nurse for over two years, and continued to remain in the service until her health failed her and she was compelled to abandon the service on account of her health, which was injured because of her army service, and that she is now a widow, old and decrepit, and has no means or property of any kind for her support, and has no means of a livelihood except her own labor.

A. M. McDonald, a captain in said regiment, testifies that her services as nurse were very valuable to said regiment, as he knew of his own knowledge.

James Carson testifies that he was a member of Company F, of said regiment, during the war of 1861–'65, and that he knew Mary C. Upton was with said regiment as nurse for over two years, and did nurse and care for the sick and afflicted of said regiment in the hospital, and that during the battle of Corinth, Miss., the said Mary C. Upton was in the battle and distributed cartridges and other ammunition to the soldiers while they were engaged in battle and rendered other valuable services in said battle, and that she was a faithful nurse during all of said two years.

In view of these facts the committee are of opinion that this petitioner is entitled to a pension, and therefore recommend that said bill be amended by adding after the word "volunteers" in the seventh line the words "at the rate of twelve dollars per month," and that the bill so amended do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 61.

MARY PERSONEUS.

February 15, 1890.—Committed to the Committee of the whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2015.]

The committee to whom was referred the above bill beg leave to report that they have considered said bill and find that the committee of this House at the last session made a favorable report on the same, which this committee adopt as their own with an amendment.

The report so made by said committee of the last Congress is in the words and figures following:

The committee to whom was referred this case beg leave to report that they have considered the same, and find from the evidence on file in this case that the complainant was the wife of William B. Crisfield, a sergeant of Company G, Forty-first Regiment Missouri Volunteer Infantry; that he served with credit in such capacity; that he afterwards enlisted as a trooper, in January, 1870, in Troop L, Seventh Cavalry; that he afterwards re-enlisted February 1, 1875, in the same troop; and that he was killed in action with General Custer at Little Big Horn, June 25, 1876. It appears further that after the death of the soldier the widow married one Martin Personeus, who was also a member of the same troop as her former husband, and served in said company until his term of enlistment terminated. It further appears from the testimony that the said Personeus is now incurably insane, having been admitted to the Insane Hospital at Jacksonville, Ill., November 11, 1886, and discharged May 31, 1888, unimproved. The official certificate of the superintendent of said asylum is now on file with this committee to the effect that said Personeus is hopelessly insane.

It further appears that the said Mary Personeus has two children, the fruit of said marriage, who are now public paupers, and the said complainant is also a public charge, and is wholly unable to perform labor to support herself and her said children. It further appears that the said Martin Personeus, when in his right mind, filed a claim against the Government for a pension, claiming that his illness was due to his army service, but having become insane he was unable to furnish the necessary proof as to the facts of the case and his wife has no personal knowledge thereof, and hence no relief can be had through the Pension Office. This woman, therefore, having been the wife of a soldier who fought in the war of the rebellion and defended the flag of his country and was afterwards killed in action with the gallant General Custer and she then having become the wife of another soldier who is now worse than dead—we think that this widow and the soldier's children should not be public charges while the country that they defended is amply able to support them; so we report the bill back with a recommendation that the same do pass

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 62.

WILLIAM D. HUMMER.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4531.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4531) granting a pension to William D. Hummer, submit the following report:

That the soldier enlisted August 20, 1864, and was discharged August 8, 1865. The basis of the claim is deafness contracted at Nashville, Tenn., January, 1865.

The claim was rejected on the ground that the alleged deafness existed prior to enlistment. The claimant testifies on oath that he contracted deafness from exposure and hardships incurred in army life on the march from Nashville, Tenn., and the Tennessee River in the winter of 1864 and 1865, and he is now sixty years of age. A great number of witnesses testify to the high character and credibility of this soldier. The report of the board of surgeons states that this soldier is entitled to thirteen-eighteenths, third grade, for disability caused by deafness, and that his impairment of hearing approximates total.

There was a special examination in this case, and he reports as follows:

> During all my experience, in my judgment I have not seen a case presenting stronger grounds for special action than this. He is represented to me as being a man of excellent reputation for trust, in fact, none better, and he impressed me as being very careful and conscientious in his statements.

He has been suffering from deafness since he left the Army, and is now nearly totally deaf, and it can not be presumed that he was deaf when he entered the Army, for if so he would not have been accepted. He has no means of livelihood but by his labor, and now, because of his deafness, he is unable to labor.

Your committee recommend that the bill be amended by striking out of the sixth line of said bill the following words, "at the rate of thirty dollars per month," and that as amended the same do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 63.

DANIEL J. COX.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Lane, from the Committee on Invalid Pensions, submitted the following:

REPORT:

[To accompany bill H. R. 4129.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4129) granting a pension to Daniel J. Cox, submit the following report:

The record in this case shows that the soldier enlisted July 21, 1862, and was discharged July 8, 1865. The basis of the claim is, as alleged, an injury to the face caused by the explosion of a shell at the battle of Jonesborough, Ga., August, 1864. The claim was rejected by the Department on the ground that the alleged disability was not received in the line of duty and was not due to the service. The testimony in this case is very voluminous and is not without some conflict, but the committee think that the same can be harmonized consistent with the claim in this case.

It is in proof that the soldier when he went into the service was a sound, healthy man, and several comrades testify that he was injured in said battle of Jonesborough, Ga., and when he entered the battle he was perfectly well and sound and that after the battle an injury was on his face.

Charles D. Allen, a comrade, swears he was with him in said battle and knows of his own knowledge that the soldier received said injury in said battle. There is much other testimony to the same effect.

It is attempted, however, to discredit this statement by showing that the soldier remained with his company until they were mustered out in 1865. Admitting this latter fact to be true, still it does not detract from the fact that he was injured in battle.

It is further in evidence that said injury has continued ever since and gathers three or four times every year so that the same must be lanced. The examining surgeon says in his report in this case the disability is one-fourth.

We therefore recommend that the bill do pass, with an amendment striking out all after the word "rebellion" in the sixth line of said bill up to and including the word "month" in the seventh line of said bill, and as so amended that the same do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 64.

TERMS OF COURTS IN SOUTH DAKOTA.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Caswell, from the Committee on the Judiciary, submitted the following:

REPORT:

[To accompany bill S. 620.]

The Committee on the Judiciary have had under consideration the bill (S. 620) to provide for the time and place of holding the terms of the United States district courts in the State of South Dakota, and recommend its passage with amendments.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 65.

AMENDMENT OF REVISED STATUTES OF THE UNITED STATES RELATING TO COPYRIGHTS.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Adams, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 6941.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3853) to amend title 60, chapter 3, of the Revised Statutes of the United States relating to copyrights, having had the same under consideration, submit the following report thereon:

The purpose of this bill is to establish international copyright in the United States. It is proposed to remove from our statutes an illiberal and unwise discrimination against foreign authors now almost unknown to the laws of other civilized nations. The subject is not a new one in this country. It has been discussed in Congress and elswhere for more than fifty years.

In 1837 petitions of American and British authors were presented to the Senate by Henry Clay. They were referred to a select committee whose members were Clay, Webster, Buchanan, Preston, and Ewing. The report of the committee is believed to have been drawn by Henry Clay. It is as follows:

THE HENRY CLAY COPYRIGHT REPORT.

The select committee to whom was referred the address of certain British and the petition of certain American authors have, according to order, had the same under consideration and beg leave now to report:

1. That by the act of Congress of 1831, being the law now in force regulating copyrights, the benefits of the act are restricted to citizens or residents of the United States; so that no foreigner residing abroad can secure a copyright in the United States for any work of which he is the author, however important or valuable it may be. The object of the address and petition, therefore, is to remove this restriction as to British authors and to allow them to enjoy the benefits of our law.

2. That authors and inventors have, according to the practice among civilized nations, a property in their respective productions of their genius is incontestable; and that this property should be protected as effectually as any other property is by law follows as a legitimate consequence. Authors and inventors are among the greatest benefactors of mankind. They are often dependent exclusively upon their own mental labors for the means of subsistence, and are frequently, from the nature of their pursuits, or the constitution of their minds, incapable of applying that provident care to worldly affairs which other classes of society are in the habit of bestowing. These considerations give additional strength to their just title to the protection of the law.

3. It being established that literary property is entitled to legal protection, it results that this protection ought to be afforded wherever the property is situated. A

British merchant brings or transmits to the United States a bale of merchandise, and the moment it comes within the jurisdiction of our laws they throw around it effectual security. But if the work of a British author is brought to the United States, it may be appropriated by any resident here and republished, without any compensation whatever being made to the author. We should be all shocked if the law tolerated the least invasion of the rights of property in the case of the merchandise, whilst those which justly belong to the works of authors are exposed to daily violation without the possibility of their invoking the aid of the laws.

4. The committee think that this distinction in the condition of the two descriptions of property is not just, and that it ought to be remedied by some safe and cautious amendment of the law. Already the principle has been adopted in the patent laws of extending their benefits to foreign inventions or improvements. It is but carrying out the same principle to extend the benefits of our copyright laws to foreign authors. In relation to the subjects of Great Britain and France, it will be but a measure of reciprocal justice; for, in both of those countries, our authors may enjoy that protection of their laws for literary property which is denied to their subjects here.

5. Entertaining these views, the committee have been anxious to devise some measure which, without too great a disturbance of interests or affecting too seriously arrangements which have grown out of the present state of things, may, without hazard, be subjected to the test of practical experience. Of the works which have heretofore issued from the foreign press, many have been already republished in the United States; others are in a progress of republication and some probably have been stereotyped. A copyright law which should embrace any of these works might injuriously affect American publishers and lead to collision and litigation between them and foreign authors.

6. Acting, then, on the principles of prudence and caution, by which the committee have thought it best to be governed, the bill which the committee intend proposing provides that the protection which it secures shall extend to those works only which shall be published after its passage. It is also limited to the subjects of Great Britain and France; among other reasons, because the committee have information that, by their laws, American authors can obtain there protection for their productions, but they have no information that such is the case in any other foreign country. But, in principle, the committee perceive no objection to considering the republic of letters as one great community, and adopting a system of protection for literary property which should be common to all parts of it. The bill also provides that an American edition of the foreign work, for which an American copyright has been obtained, shall be published within a reasonable time.

7. If the bill should pass, its operation in this country would be to leave the public, without any charge for copyright, in the undisturbed possession of all scientific and literary works published prior to its passage—in other words, the great mass of the science and literature of the world; and to entitle the British and French author only to the benefit of copyright in respect to works which may be published subsequent to the passage of the law.

8. The committee can not anticipate any reasonable or just objection to a measure thus guarded and restricted. It may, indeed, be contended and it is possible that the new work when charged with the expense incident to the copyright, may come into the hands of the purchaser at a small advance beyond what would be its price if there were no such charge; but this is by no means certain. It is, on the contrary, highly probable that when the American publisher has adequate time to issue carefully an edition of the foreign work without incurring the extraordinary expense which he now has to sustain to make a hurried publication of it, and to guard himself against dangerous competition he will be able to bring it into the market as cheaply as if the bill were not to pass. But if that should not prove to be the case, and if the American reader should have to pay a few cents to compensate the author for composing a work by which he is instructed and profited, would it not be just in itself? Has any reader a right to the use, without remuneration, of intellectual productions which have not yet been brought into existence, but lie buried in the mind of genius? The committee think not; and they believe that no American citizen would not feel it quite as unjust in reference to future publications to appropriate to himself their use, without any consideration being paid to their foreign proprietors as he would to take the bale of merchandise in the case stated without paying for it; and he would the more readily make this trifling contribution when it secured to him, instead of the imperfect and slovenly book now often issued, a neat and valuable work worthy of preservation.

9. With respect to the constitutional power to pass the proposed bill, the committee entertain no doubt, and Congress, as before stated, has acted on it. The constitution authorizes Congress, "to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective

writings and discoveries." There is no limitation of the power to natives or residents of this country. Such a limitation would have been hostile to the object of the power granted. The object was to *promote* the progress of science and useful arts. They belong to no particular country, but to mankind generally. And it can not be doubted that the stimulus which it was intended to give to mind and genius generally—in other words, the promotion of the progress of science and the arts—will be increased by the motives which the bill offers to the inhabitants of Great Britain and France.

From the time of Henry Clay until now, American authors have urged the passage of an international copyright law. They have urged it first as an act of justice to foreign authors, who, as Henry Clay declared, are citizens of the great republic of letters, and entitled as such to the protection of all civilized governments. They have urged it, secondly, in behalf of sound learning and pure literature here and abroad, because it will tend to prevent the mutilation of foreign texts in this country and the mutilation of American texts abroad. They have urged it, thirdly, and still urge it, as an act of wise American public policy, because it will tend to promote the development of American literature. Said Washington Irving in 1840:

For myself, my literary career as an author is drawing to a close, and can not be much affected by any disposition of this question, but we have a young literature springing up and daily unfolding itself with wonderful energy and luxuriance, which as it promises to shed a grace and luster upon the nation, deserves all its fostering care. How much this growing literature may be retarded by the present state of our copyright law I had recently an instance in the cavalier treatment of a work of merit, written by an American who had not yet established a commanding name in the literary market. I undertook as a friend to dispose of it for him, but found it impossible to get an offer from any of our principal publishers. They even declined to publish it at the author's cost, alleging that it was not worth their while to trouble themselves about native works of doubtful success while they could pick and choose among the successful works daily poured out by the British press, *for which they had nothing to pay for copyright.* This simple fact spoke volumes to me, as I trust it will do to all who peruse these lines. * * * I trust that whenever this question comes before Congress it will at once receive an action prompt and decided, and will be carried by an overwhelming if not unanimous vote, worthy of an enlightened, a just, and a generous nation.

Nearly fifty years later the following memorial was presented to Congress:

The undersigned American citizens, who earn their living in whole or in part by their pen, and who are put at disadvantage in their own country by the publication of foreign books without payment to the author, so that American books are undersold in the American market to the detriment of American literature, urge the passage by Congress of an international copyright law, which will protect the rights of authors and will enable American writers to ask from foreign nations the justice we shall then no longer deny on our own part.

This memorial was signed by one hundred and forty-four American authors.

The efforts of American authors to secure the passage of an international copyright law in the interest of American literature have thus far failed. They have failed, as stated by a committee of the last House, "mainly because of the clashing of the different interests concerned in the making of books." "But at last and now for the first time," says the committee, "authors, publishers, type-setters, electrotypers, binders, booksellers, and all others engaged in making and distributing books have with singular unanimity agreed upon a bill which they ask us to pass."

The bill thus referred to is substantially the same as the bill now under consideration. It was reported to the House with a favorable

recommendation by the Judiciary Committee of the Fiftieth Congress. The report is as follows:

[House Report No. 1875, Fiftieth Congress, first session.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 8715) to amend title 60, chapter 3, of the Revised Statutes of the United States, submit the following report:

The present law (title 60, chapter 3, Revised Statutes) limits the benefit of copyright to citizens of or residents within the United States. In this respect the United States stands alone among civilized nations. Either by legislation or treaty, or both, copyright is as free to aliens and non-residents as to citizens or subjects in all countries but our own. Great Britain is apparently an exception, but its exclusion of foreigners from this privilege applies only to citizens of the United States, and for the sufficient reason that our Government is the only one that refuses British authors protection in their literary or artistic property. Copyright covers not only books, but maps, charts, dramatic and musical compositions, engravings, cuts, prints, statues, etc.

This bill proposes that the creators of this class of property, whether citizens or foreigners, shall be protected in the enjoyment of it within the limits of the United States. It is now the only species of property which stands unprotected by our laws. Its recognition and protection seem to rest upon the foundation of common honesty. The persistent confiscation of it has been a reproach to our people, a serious discouragement to our authors, a marked injury to our publishing trade, while working demoralization and debasement of our literature.

For some fifty years efforts have been made to change the law. From time to time, after full discussion and the closest calculation of probable effects, bills were reported from committees of Congress, but they failed of passage mainly because of the clashing of the different interests concerned in the making of books. But at last, and now for the first time, authors, publishers, type-setters, electrotypers, binders, book-sellers, and all others engaged in making and distributing books have with singular unanimity, agreed upon a bill which they ask us to pass.

Under its provisions the foreign author may copyright any future work of his in the United States upon the same terms as a citizen or resident here. But the copies deposited with the Librarian of Congress must be printed from type set within the United States, thus insuring that all the work shall be done here. The publication here must precede or be simultaneous with the publication in the foreign country. The bill contains other minor matters not important enough to be adverted to; all tending, however, to the better safeguarding of the system.

The American author will have the protection for his works which is now denied him because of our own denial of the rights of all others. All European powers have made provision for protecting our authors in their literary property as soon as their authors are accorded similar rights here.

The passage of this bill will, we are satisfied, encourage and stimulate American authorship, designing, engraving, and all the arts that enter into the making of good books. By it our authors obtain a wider market—that of the whole world—while they are saved from the competition of the unpaid work of the foreign authors. It will unquestionably raise the standard of literary taste also by banishing the "trashy" and the "gas-light" literature from the field. It needs "no angel from Heaven to tell us" all the harm that such stuff has done our youth.

But will the price of books be increased? This question, as well as the moral aspect of the case, must be fairly met. It is certain that the best books written by men and women all over the world will, under international copyright, be sold in the United States for less than they are sold now; and the general concensus of opinion, the argument pushed almost to a demonstration, is that all other books will be sold for as low a price as they are now. The experience of the countries on the continent of Europe before and after the adoption of international copyright may be cited as conclusive on this point. When one solvent and sagacious American publisher obtains the sole right for the American market of a foreign author's work he can make it better, and as cheap at least, as ten publishers who "pirate" such a book under the present management and run a cut-throat competition for its sale. It will be better, for it will be printed carefully and clearly; not as now, hastily and carelessly, sometimes from worn plates or bad type, to the ruin of American eyes; and it will be as cheap per copy, for the market will be assured, and the publisher will find it, as he does now, to his interest to fix the price so as to sell the greatest number.

By way of illustration of this last point it may be stated that a copy of a book in an edition of 1,000 must cost six times as much as one in an edition of 16,000. The market—the number willing to buy any given book—is the factor that determines

its price. There will, of course, under any system, be cheap and dear editions of every good book, domestic as well as foreign, copyrighted or otherwise.

The works of American authors remain unaffected by the proposed law, except in so far as a stimulus to higher work may, and undoubtedly will, be given to them.

All works of foreign authors published before the proposed law takes effect retain their present status. The law will be necessarily prospective. Its passage will be advantageous to our own authors, publishers, and artists, just to all others, beneficial to our literature, and honorable to our civilization.

Your committee report the bill favorably, with slight verbal amendments.

It is believed that American authors, publishers, printers, booksellers, and all others engaged in making and distributing American books, periodicals, and newspapers are even more nearly unanimous in support of an international copyright law than they were when the foregoing report was written. The International Typographical Union of North America, composed of three hundred and three subordinate unions, representing all sections of the United States, and having an aggregate membership of nearly forty thousand, heartily indorsed the proposed legislation by a resolution adopted at the session held at Denver, Colo., in June, 1889. This resolution was presented to your committee by Columbia Union No. 101.

At the annual meeting of the American Newspaper Publishers' Association held in New York February 13, 1890, the following resolution was unanimously adopted:

"*Resolved*, That the American Newspaper Publishers' Association is in hearty sympathy with the efforts now being made by American authors to obtain from Congress a fuller security for literary property, and we believe the proposed international copyright bill to be in the interest of the national honor and welfare."

Your committee approve of the substance of the pending bill, but regard its form as objectionable. It provides for the striking out and inserting certain words in certain sections of the Revised Statutes without setting out in full the sections of the Revised Statutes as they will stand when amended.

To meet this objection your committee report the said bill, together with a substitute therefor, containing the substance of the pending bill in an unobjectionable form.

Your committee recommend that said substitute bill do pass and that said original bill (H. R. 3853) do lie upon the table.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 66.

ORGANIZATION OF THE TERRITORY OF OKLAHOMA, AND ESTABLISHMENT OF COURTS IN THE INDIAN TERRITORY.

February 15, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Struble, from the Committee on the Territories, submitted the following

REPORT:

[To accompany bill H. R. 6786.]

The Committee on the Territories, to whom was referred the following bills—

H. R. 6. To organize the Territory of Oklahoma, and for other purposes.
H. R. 7. To provide a temporary government for the Territory of Oklahoma.
H. R. 5414. To organize the Indian Territory, and for other purposes.
H. R. 6786. To organize the Territory of Oklahoma, to establish courts in the Indian Territory, and for other purposes.

Having had the same under consideration have instructed me to report the same back, with the recommendation that the bills numbered, respectively, 6, 7, and 5414 do lie upon the table, and that the bill (H. R. 6786) to organize the Territory of Oklahoma, to establish courts in the Indian Territory, be passed without amendment.

The proposed bill is comprehensive in its provisions and it is believed by your committee that it will meet a long felt want in the country heretofore known as the Indian Territory.

Your committee would have recommended a measure which would have embraced within the boundaries of the Territory of Oklahoma the whole of the Indian Territory as heretofore defined were it not for the fact that the five civilized tribes or nations which own and occupy the eastern and southeastern portion of said Territory object to having the lines of any Territorial or State government extended around their lands, and cite treaty stipulations to sustain such objection.

While expressing no opinion as to whether such objection is valid or not, in view of the changed conditions with which we are confronted, yet, in order to avoid contention on this point your committee deem it best to exclude said civilized tribes or nations from the boundaries of the proposed Territory of Oklahoma, and to provide courts in said Indian nations for the enforcement of law and for the protection of the persons and property of all residents therein.

The United States is authorized to establish such courts, by express treaty stipulations, and no objection has been offered before your committee by the representatives of such nations or tribes to the establishment of such courts therein.

OKLAHOMA TERRITORY.

The accompanying bill provides that all that part of the Indian Territory as heretofore described, west of the lands owned and occupied by the five civilized tribes, including what is known as the Public Land Strip, shall be created into a temporary government, by the name of the Territory of Oklahoma.

But nothing in the

act shall be construed to impair the rights of person or property, or to impair any patent to or right of occupancy of lands now pertaining to the Indians in said Territory under the laws, agreements, and treaties of the United States, or to include any territory occupied by any Indian tribe for which title has been conveyed by patent or otherwise from the United States, or to which such tribe may be entitled by law, agreement, or treaty, without consent of said tribe, or any territory which by treaty or agreement with any Indian tribe is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Oklahoma until said tribe shall signify its assent to the President of the United States that such territory be included in said Territory of Oklahoma, except for judicial purposes as provided therein, or to affect the authority of the Government of the United States to make any regulation, or to enact any law respecting such Indians, their lands, property, or other rights, which it would have been competent to make or enact if this act had never passed.

And it is further provided that—

Nothing in this act shall be construed to interfere with the local government of any of the Indian tribes which may now be provided for by the laws and treaties of the United States, or which may exist in conformity thereto.

Your committee are of the opinion that every right of any Indian tribe in the Indian Territory as heretofore defined has been carefully guarded and protected in the accompanying bill.

The bill was discussed at great length by the representatives of the five civilized tribes and by others, and such concessions and amendments were made as to practically reconcile all objections, so far as the Indian tribes are concerned. If anything is retained in the bill to which objection was made, and not removed, it is believed to be of minor importance.

There were many conflicting interests to reconcile, but a spirit of liberality and mutual concession has been observed by your committee in the preparation of the bill, so that there is practical unanimity in the committee and among those who appeared before the committee in support of the bill herewith reported.

The Indian Territory as heretofore defined contained 44,156,240 acres, and the Public Land Strip contained 3,672,640 acres, in all 47,828,880 acres. The lands embraced within the limits of the proposed Territory of Oklahoma amount to about 23,267,719 acres.

That portion of the Territory occupied by Indian tribes is shown in the following table, which also shows the number of each tribe, the

acreage per capita, the acreage required by Indians, allowing them 160 acres for family of four, and the amount of surplus lands:

Name of tribe.	Population.	Acreage of reservation.	Acreage per capita.	Acreage required by Indians, allowing them 160 acres for family of four.	Surplus.
Osage	1,552	1,470,059	947¾	62,080	1,407,979
Kansas (Kaw)	225	100,137	440⅔	5,000	95,137
Pawnee	1 045	283,120	270¾	41,800	241,224
Sac and Fox	457	479,667	1,049½	18,280	461,387
Pottawatomie	550	575,877	1,047	22,000	553,877
Tonkawa	92	100,000	1,087	3,680	96,320
Ponca	574	101,894	177½	8,610	93,284
Otoe and Missouria	266	129,113	485½	10,640	118,473
Iowa	89	228,418	2,566½	3,260	225,158
Kickapoo	346	206,466	596¾	14,590	190,876
Cheyenne and Arapahoe	8,609	4,297,771	1,193¾	144,160	4,153,611
Wichitaw	189	743,610	3,900	7,560	736,050
Kiowa, Comanche, and Apache	3,032	2,968,893	979	121,280	2,847,613
Total	12,026	11,685,025	.....	462,940	11,220,989

The area in said Territory not occupied by Indian tribes and the acreage thereof is as follows:

	Acres.
Cherokee Outlet	6,022,244
Public Land Strip	3,672,640
Oklahoma lands	1,887,800
Total	11,582,684

GREER COUNTY.

These areas do not include what is known as Greer County. The bill simply provides that the Territory to be organized shall be bounded on the south by the State of Texas wherever that line may be determined hereafter to be. If it should be decided that Greer County is a part of the Indian Territory and belongs to the United States it will be embraced within the provisions of the bill and the lands thereof be opened to settlement. Including this county the area of the whole Territory organized under this bill comprises 38,718 square miles, or 24,779,885 acres, an area about the size of the State of Ohio. The Indian tribes now located within said Territory by Departmental orders and special acts of Congress are included within the Territory for judicial purposes, and for such other purposes as may be consistent with our treaty obligations with each of these tribes. But it is expressly provided, as stated heretofore, that nothing in the bill shall interfere with any right which any Indian tribe may now have under any treaties or agreements with the United States heretofore ratified.

The State of Texas claims the territory in Greer County. The accompanying bill provides for submitting the respective claims of Texas and the United States to Greer County to the decision of a board of arbitration, which, it is believed, will reach a speedy decision of the matters in controversy, and one which will be binding upon both parties. A large number of citizens have located in that county and the ownership of the lands and jurisdiction therein should not be left in doubt.

LANDS OPENED TO SETTLEMENT.

About the close of the last session of the Fiftieth Congress the lands known as "Oklahoma proper" were opened to settlement, under the

legislative provisions which were contained in the "act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1890, and for other purposes," approved March 2, 1889, and under the provisions of section two of "An act to ratify and confirm an agreement with the Muscogee (or Creek) Nation of Indians in the Indian Territory, and for other purposes," approved March 1, 1889.

The President issued a proclamation, as provided in said acts, opening the lands to settlement on the 22d day of April, 1889. The lands thus opened were taken at once, and numerous cities and towns have sprung up on those lands since that time. It is estimated by your committee that there are now in the Territory of Oklahoma, including the Public Land Strip, at least 90,000 white people and others than Indians, and about 12,000 Indians. These people are without local government of any kind, except such as they have established for themselves. City and town governments have been established, but there are no county organizations. The only jurisdiction exercised over them by the authority of the United States is the civil jurisdiction and criminal jurisdiction in misdemeanors conferred on the court at Muscogee, and the criminal jurisdiction conferred on the United States courts at Wichita, Kans., and Paris, Tex.

This jurisdiction is very limited, and the manner in which it is enforced makes it questionable whether it affords any relief whatever to the people.

THE PRESIDENT'S RECOMMENDATION.

The President of the United States, in his message to Congress at the beginning of this session, thus refers to the lands opened to settlement in the Indian Territory, to the failure of Congress to provide civil government for the people who might settle therein, and to the imperative necessity for prompt legislation by Congress on the subject:

The land remaining and available for settlement consisted of 1,887,796 acres, surrounded on all sides by lands in the occupancy of Indian tribes. Congress had provided no civil government for the people who were to be invited by my proclamation to settle upon these lands, except as the new court, which had been established at Muscogee, or the United States courts in some of the adjoining States, had power to enforce the general laws of the United States.

In this condition of things I was quite reluctant to open the lands to settlement. But in view of the fact that several thousand persons, many of them with their families, had gathered upon the borders of the Indian Territory, with a view to securing homesteads on the ceded lands, and that delay would involve them in much loss and suffering, I did, on the 23d day of March last, issue a proclamation declaring that the lands therein described would be open to settlement under the provisions of the law on the 22d day of April following, at 12 o'clock noon. Two land districts had been established, and the offices were open for the transaction of business when the appointed time arrived.

It is much to the credit of the settlers that they very generally observed the limitation as to the time when they might enter the Territory. Care will be taken that those who entered in violation of the law do not secure the advantage they unfairly sought. There was a good deal of apprehension that the strife for locations would result in much violence and bloodshed, but happily these anticipations were not realized. It is estimated that there are now in the Territory about sixty thousand people; and several considerable towns have sprung up, for which temporary municipal governments have been organized. Guthrie is said to have now a population of almost eight thousand. Eleven schools and nine churches have been established, and three daily and five weekly newspapers are published in this city, whose charter and ordinances have only the sanction of the voluntary acquiescence of the people from day to day.

Oklahoma City has a population of about five thousand, and is proportionately as

well provided as Guthrie with churches, schools, and newspapers. Other towns and villages having populations of from one hundred to a thousand are scattered over the Territory.

In order to secure the peace of this new community, in the absence of civil government, I directed General Merritt, commanding the Department of the Missouri, to act in conjunction with the marshals of the United States to preserve the peace, and upon their requisition to use the troops to aid them in executing warrants and in quieting any riots or breaches of the peace that might occur. He was further directed to use his influence to promote good order and to avoid any conflicts between or with the settlers. Believing that the introduction and sale of liquors, where no legal restraints or regulations existed, would endanger the public peace, and in view of the fact that such liquors must first be introduced into the Indian reservations before reaching the white settlements, I further directed the general commanding to enforce the laws relating to the introduction of ardent spirits into the Indian country.

The presence of the troops has given a sense of security to the well-disposed citizens, and has tended to restrain the lawless. In one instance the officer in immediate command of the troops went further than I deemed justifiable in supporting the *de facto* municipal government of Guthrie, and he was so informed and directed to limit the interference of the military to the support of the marshals on the lines indicated in the original order. I very urgently recommend that Congress at once provide a Territorial government for these people. Serious questions, which may at any time lead to violent outbreaks, are awaiting the institution of courts for their peaceful adjustment. The American genius for self-government has been well illustrated in Oklahoma, but it is neither safe nor wise to leave these people longer to the expedients which have temporarily served them.

In view of the earnest recommendation of the President that Congress at once provide a Territorial government for Oklahoma, your committee indulge the hope that the bill which they have reported for that purpose may receive prompt and favorable consideration.

A Territorial government is provided for Oklahoma similar to that in the other Territories of the United States, and additional provisions in reference to securing lands under the homestead laws are recommended, in order that the actual and bona fide settler may be protected as far as possible in his rights.

OTHER LANDS MAY BE OPENED TO SETTLEMENT.

No lands are opened by this bill to settlement in addition to the Oklahoma lands referred to by the President, except what is known as the Public Land Strip. But it is provided that when the Indian titles and claims to other lands are secured and satisfied, such lands shall be opened to settlement under the provisions of the bill. No reference is made in the bill to the occupancy of the Cherokee Outlet by cattle companies, and no legislation is provided in this bill for securing the relinquishment of the Cherokee claim thereto. All the provisions which exist on this subject are contained in the legislation of last Congress, and the Commission provided for by that Congress is still in existence and has not completed its negotiations.

There is no provision in the bill for opening to settlement any lands occupied or owned or claimed by any Indian tribe or nation. As to all such lands, the Commission heretofore appointed, or the President, under authority heretofore given, can alone treat for the relinquishment of such Indian titles or claims. That other lands will be secured and opened to settlement at an early day is more than probable, from the fact that the Indians in other parts of the Territory have assigned to them lands largely in excess of their present or future wants. For instance, the Cheyennes and Arapahoes, numbering 3,376, have assigned to them, for their use, 4,297,771 acres, or more than 5,000 acres to each family of four persons. Less than 1,000 acres of this land has been reduced to cultivation, and it is well known not to be useful for hunting purposes. The other Indian tribes occupy lands largely in

excess of their present or future requirements, and it is believed that future agreements may be made under the allotment law passed and departmental orders issued which will reduce the limits of those reservations and open up other large areas in the near future to actual settlement by white people.

The bill has been carefully considered, and every provision inserted which may be necessary to guard the interests and treaty rights of the Indians.

THE PUBLIC LAND STRIP.

Your committee are informed, upon information deemed reliable, that a large number of persons, estimated as high as 10,000, have settled upon that portion of the area embraced within the provisions of this bill, known as the Public Land Strip. The probabilities are that the number of persons who will settle upon this land in the near future will be much greater. Should the land embraced within this area be opened to homestead settlers, as provided in this bill, it is believed that the whole amount would be taken under the homestead laws within one year from the passage of the act. The information also received by your committee in regard to this land is to the effect that it is well adapted to agricultural purposes; that the climate is salubrious; that the water is reasonably plentiful; and that there are other valuable resources, such as coal, building material, etc.

The people now settled upon the Public Land Strip can not acquire a legal title to the land. They are without local laws for their government, except such as have been enacted by a provisional council known as the "Council of the Territory of Cimarron." This council has assumed to exercise legislative power upon very few subjects, only such matters being embraced as are absolutely necessary for the temporary security of persons and property. The Territorial council sent a memorial to the last Congress, praying for authority to organize a government which will afford protection to persons and property. In other words, they desire a Territorial government, and are willing to be embraced within the provisions of this bill. The number of people who have already settled upon the Public Land Strip is such as to imperatively require the interposition of Congress, so as to afford them the protection of the law, and enable them to secure titles to the land.

Your committee are of the opinion that in order to enable the settlers already there and those who may come after them to secure titles to the land, that the provisions of the homestead law should be applied, and that a local territorial government should be afforded them, as provided in this bill. It would not be expedient to attach the Public Land Strip to any State or Territory for judicial purposes or to extend the land laws of the United States over that region without, at the same time, affording the people residing there the protection of local government. If the land laws of the United States should be extended over the Public Land Strip, and no local government provided, the opportunities for frauds upon the public domain in connection with land entries would be afforded and no adequate means of preventing them would be provided. Your committee are therefore of the opinion that the interests of the United States, as well as those of the people who may reside upon the Public Land Strip, imperatively require that local self-government and the homestead laws, properly guarded, should be afforded them. This is accomplished in the bill for the organization of the Territory of Oklahoma.

SCHOOLS AND SCHOOL LANDS.

The accompanying bill reserves the sixteenth and thirty-sixth sections of land in every township for school purposes. It also makes temporary provision for the support of public schools in the Territory, appropriating for this purpose one hundred thousand dollars, to be expended under the direction of the governor and the Secretary of the Interior.

THE INDIAN TERRITORY.

The whole Indian Territory as heretofore defined has, owing to the failure of Congress to provide courts adequate to the wants of the people, become the refuge of criminals and desperadoes from all parts of the country. Nothing but the establishment of a Territorial government over that region and courts in the five civilized tribes will arrest the carnival of crime which prevails there, or protect the Indians therein from the rapidly increasing invasion of the criminal classes.

With a view to remedying these evils as far as possible, your committee have included in the bill for the organization of the Territory of Oklahoma, provisions establishing courts in the Indian Territory, not embraced in the Territory of Oklahoma. A supreme court, consisting of three judges, and district courts, to be presided over by these judges, have been established. The jurisdiction heretofore exercised over the five civilized tribes by the United States courts at Fort Smith, Ark., and at Paris, Tex., has, with some exceptions, been retained. But the jurisdiction of the courts in the Indian Territory, established by the accompanying bill, has been greatly enlarged, both as to civil and criminal matters, over that heretofore exercised by the court at Muscogee. For a detailed statement of the provisions on this subject, reference is made to the bill itself. Whether or not the provisions proposed are the best which could be devised, is not claimed, but that they are the best that can be secured at this time, in view of the complications which exist, there can be little doubt. And it is hoped that the bill, in these respects, can be passed substantially as reported.

POPULATION IN THE INDIAN TERRITORY.

Mr. Leo E. Bennett, United States Indian agent in the Indian Territory, in his report to the Secretary of the Interior, under date of September 21, 1889, gives the following information in reference to the population of the Indian Territory, not included in the Territory of Oklahoma:

As this report is intended for the public as well as for the Indian Office, I have not hesitated to repeat statistics that may have been heretofore given, except I have in cases used every available means to correct the figures to conform to the actual condition of affairs "to-day."

Union Indian Agency is located at Muscogee, as being the most central, easily accessible point in its jurisdiction, which extends over the Creek, Cherokee, Chickasaw, and Seminole Nations, and the strip west of 96°, known as the "Cherokee Outlet;" the whole aggregating in round numbers 20,000,000 acres of land, which is occupied by about 20,000 Indians of full blood, 32,000 of mixed blood, and 13,000 of adopted whites and freedmen, and a foreign population of more than 100,000 whites and other non-citizens, divided as follows:

Creeks, natives, and adopted freedmen	14,200
Cherokees, natives, adopted whites, other Indians, and freedmen	24,400
Choctaws, natives, adopted whites, and freedmen	18,000
Chickasaws, natives, adopted whites, and freedmen	6,000
Seminoles, natives, adopted whites, and freedmen	2,600
Total citizen population	65,200

Farm laborers and mechanics under permit and their families	45,600
Licensed traders, Government employés, employés of railroads and mines, and their families	25,000
Interlopers and criminals, principally refugees from border States, and their families, fully	35,000
Claimants to Indian citizenship	4,000
Sojourners, prospectors, and visitors	3,000
Total population fully	177,200

It would be difficult, if not impossible, to find an equal population anywhere with greater diversity of nationality, education, occupation, and creed, and with fewer interests in common.

If we add to the foregoing the population in the Territory of Oklahoma, as defined in the first section of the bill, namely, 100,000, whites and Indians, we will have an aggregate population in both Territories of 277,200. Of this population at least 190,000 are white citizens of the United States. Of the other 87,000 people, not exceeding 30,000 are full-blood Indians, and at least one-half of these have adopted the habits and customs of civilized life; live in houses and dress as white people, and many of the adults speak the English language. Excluding the full-blood Indians, there are in the Indian Territory and the Territory of Oklahoma about 247,200 people who are either white or of mixed blood, but who in personal appearance, and in their habits and customs, and in their intelligence, do not differ materially from the people who inhabit the other parts of the United States. But all the people in those Territories are entitled to that protection which just laws and local courts alone can give. The Indians are especially interested in the suppression of lawlessness in their midst. While they are amenable to their tribal laws and courts, yet there can be no security to their persons or property so long as they are in contact with the criminal classes of all other nationalities, who commit crimes and depredations and in many cases escape without punishment.

While lawlessness has prevailed to an alarming extent in the Indian Territory, yet extraordinary efforts have been made by the United States courts at Fort Smith, Ark., which exercise certain criminal jurisdiction therein. The expenses of maintaining the courts at Fort Smith, which are occupied almost exclusively with business from the Indian Territory, during the past five years and six months have reached the enormous sum of $1,124,452, as will appear from a letter furnished a member of your committee by the Attorney-General, which letter and its accompanying statement are as follows:

DEPARTMENT OF JUSTICE,
Washington, January 14, 1890.

SIR: In answer to your request for information of what expenses were incurred in certain courts during the fiscal years 1885, 1886, 1887, 1888, and 1889, and up to December 31, 1889, of the fiscal year 1890, the following tables are prepared:

Expenses United States court at Fort Smith, Ark., to December 31, 1889.

	1885.	1886.	1887.	1888.	1889.	1890.*
Marshals	$39,048.50	$37,118.65	$28,777.99	$43,836.00	$32,685.27	$11,984.69
Jurors	19,712.00	30,265.40	15,400.00	27,300.00	27,750.00	18,000.00
Witnesses	62,634.50	106,529.00	82,921.55	143,267.50	137,240.95	95,000.00
Prisoners	16,355.12	18,000.00	15,466.35	22,200.00	25,622.81	10,000.00
Bailiffs	.....	.....	.....	5,283.00	6,248.00	5,000.00
Miscellaneous	10,799.08	17,433.73	14,060.07	4,519.00	3,922.50	2,350.00
Attorneys	7,381.40	7,777.39	4,514.53	13,579.00	3,960.25	.....
Attorneys' assistants	.....	.....	.....	1,199.97	1,731.50	.....
Clerks	4,343.51	6,456.93	3,862.30	2,163.65	2,787.03	.....
Commissioners	7,541.95	9,122.00	5,832.85	3,628.45	3,747.90	.....
Total	165,812.06	232,803.10	170,835.61	266,972.97	245,696.31	142,334.69

* Six months.

Expenses United States courts at Wichita, Kans., as far as practicable to state—the Department keeping an account of judiciary expenses for each judicial district, but not separate accounts for each term of a court in each district.

[The expenses given for 1890 are those up to December 31, 1889.]

	1885.	1886.	1887.	1888.	1889.	1890.
Marshals	$2,000	$2,500	$2,400	$2,000	$2,500	$500
Jurors	3,100	3,349	2,800	2,874	3,500	1,500
Witnesses	7,600	8,100	5,000	11,000	11,000	15,000
Prisoners	240	500	500	600	900	(*)
Bailiffs	.....	.....	.....	270	200	(*)
Miscellaneous	270	280	400	270	100	(*)
Total	13,210	14,729	11,000	16,914	18,200	17,000

* No definite amounts asked for; such expenses being included in other court expenses.

Expenses United States court at Paris, Tex., to December 31, 1889.

	1889.	1890.*
Marshals	$500	$1,000
Jurors	1,000	3,000
Witnesses	1,500	32,880
Prisoners	250	1,000
Bailiffs	214	1,000
Miscellaneous	1,000	1,000
Total	4,464	39,880

* Six months.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

Hon. W. M. SPRINGER,
House of Representatives.

THE MUSKOGEE COURT.

Attention is called to the following extract from the report of Mr. Bennett, United States Indian agent for the five civilized tribes, under date of September 21, 1889 (to which report reference has already been made by your committee), for the purpose of showing the success which has attended the establishment of the United States court at Muscogee by act of March 1, 1889, and to show that the jurisdiction of the court should be enlarged. Mr. Bennett says:

As a tentative measure the United States court, established at Muscogee by act of Congress, approved March 1, 1889, has been a decided success, and I can testify to the marked diminution of crime apparent as a result thereof. Heretofore the absence of any tribunal to determine disputes as to contracts had caused the principals in many cases to "shoot it out." Now, the parties have a legal remedy where the amount involved is $100 or more. About five hundred suits have already been filed in this court, embracing all classes of civil causes. The jurisdiction of the court extends to every civil action where the amount involved is $100 and upward, and the practice, pleadings, and mode of procedure are similar to the Arkansas code. This court also has jurisdiction in minor cases of larceny and assaults, disturbances of religious worship, etc. Hon. James M. Shackelford is the judge of this court, and his name has already become a terror to the evil-doer. I am pleased to testify to his peculiar fitness for the arduous duties, and his most excellent conduct of the affairs of the court. Much good has been accomplished by this court, and even with its restricted powers it has proved a blessing to the country.

Yet it is not possible under the present law for the court to reach even a reasonable development. Its jurisdiction should be greatly enlarged. It is said that in human society there exists a horde of incarnate canine appetites, restlessly seeking to slip the leash of law, that they may unrestricted indulge in vice and crime. For

years and years the Indian Territory has been a harbor and asylum against civil and criminal process for this class of beings. There are 35,000 people living in the limits of this agency who have no legal or moral right to remain in the country. They are fugitives from the States, outlaws of every class, murderers, thieves, whisky peddlers, gamblers, prostitutes, etc. Their influence is corrupting, their touch is pollution, and their example is demoralizing. To their malevolent influence may be directly traced the extension of crime in this country. Some means of suppressing this great and growing evil should be conferred upon our United States court. I say "growing evil," for the thousands of children of these intruding criminals are nurtured in crime and do not know the right from the wrong. They are born in iniquity and reared in unrighteousness and sin, without schools, without religion, without any restraining influence, and it does not cause any wonder that the child follows the footsteps of its parent.

The United States court at Muscogee should have its powers enlarged to embrace original and exclusive jurisdiction over all crimes committed in the five civilized tribes; it should have civil jurisdiction in all cases involving $20 and over; it should be empowered to grant divorces, determine the custody of children, and award alimony. Probate powers should be conferred upon it, and through its operations should be settled the estates of all non-citizens who are deceased in this country. The provision that debars the court from "jurisdiction over controversies between persons of Indian blood only" has been construed in many ways. The general view is that this provision is detrimental and should be removed. There can be no just reason for depriving a man of the rights and privileges of the protection afforded by the United States court because he is an Indian. His rights are as sacred as those of any other person and should be respected accordingly The Indian should be protected by the same law that protects the white man, and should be taught to know and respect legal and equitable rights as recognized in courts of justice. As all men are free, so all men should be equal, and no man, because he happens to be an Indian, should be cut off from advantages and privileges afforded other men, nor be prevented from attaining the highest place if he desires it, nor be denied that peace and comfort, security and perfect liberty which is accorded his fellow-man. The Indian ought to be regarded as a man with a man's rights and privileges and a man's duties and responsibilities. If the Indian does not wish to surrender his tribal autonomy his desires may be easily gratified; but that should not act to prevent him from having access to the courts, from living under the protection of the law, for being amenable for its infringement.

This Indian agency system of management is antiquated, and is detrimental to the higher development of man. No arbitrary and despotic system of ruling a people should be suffered to exist in this American home of the free; but the justice of courts and the protection of the Constitution and laws of the United States should be extended over the Indian as well as the white man. The agency system should give place to its more capable, adequate, and efficient successor, the United States court.

It is believed by your committee that the establishment of local courts of enlarged jurisdiction in the Indian Territory will have the effect of preventing in a great measure the commission of crimes therein. If the people are furnished redress in courts located in their neighborhood for every grievance, however slight, there will be less resort to violence and personal encounters. If efficient judicial remedies are accessible, the resort to illegal methods will be less frequent.

If there should be any objection offered to this bill on the ground that a greater expense would result from the establishment of courts and the creation of new officers, such objection will be fully met by calling attention to the fact that, if courts are brought near the people, the expense of procuring the attendance of witnesses, jurors, and parties will be greatly reduced.

EXTRADITION OF CRIMINALS.

It will be seen by reference to the report of Indian Agent Bennett, extracts from which are given in this report, that there are now in the Indian Territory, "interlopers and criminals, principally refugees from border States, and their families," to the number of at least 35,000. There is no provision of law at this time by which any of these criminals

can be extradited. But by the provisions of the bill reported by your committee the chief-justice of the supreme court of the Indian Territory is clothed with the same powers as to extradition of criminals that may be exercised by the governor of Oklahoma. This provision will aid the authorities in ridding the Territory of the presence of criminals and outlaws from other States and Territories.

AMOUNTS APPROPRIATED.

The bill reported by your committee contains the necessary appropriation for carrying it into effect for the remainder of the current fiscal year. These appropriations are as follows:

APPROPRIATIONS FOR TERRITORY OF OKLAHOMA.

Greer County arbitration	$10,000
Expenses of legislature, including printing of session laws	40,000
Salaries	20,000
Rent of buildings, records, etc	15,000
Census	10,000
Public schools	100,000
Completing survey	50,000
	245,000

INDIAN TERRITORY.

Salaries of judges, fees of marshals, attorneys, etc	20,000
Rent of buildings, mileage, per diem, jurors and witnesses, records, etc	20,000
	40,000
Total for both Territories	285,000

These amounts may seem large to those who have not carefully studied the situation, but your committee, after thorough investigation, are of the opinion that no more is appropriated than will be necessary for the purposes indicated. But however great such appropriations may be, there is a provision in the bill which will bring into the Treasury many millions of dollars in the near future. Section 14 of the bill allows any person who has taken a homestead in the Territory of Oklahoma, if he has complied with the land laws in other respects, to commute his homestead into a pre-emption after eighteen months from the date of locating thereon, upon the payment of the sum of $1.25 per acre for the lands embraced in such homestead.

It is believed that at least one-half of all the lands opened to settlement on the 22d of April last will be thus commuted. At least a million dollars would be realized from the lands already opened to settlement. The lands in the Public Land Strip would, under this section, realize at least another million dollars. There are about 17,000,000 acres of other lands in the Indian Territory which will, in the future, through negotiations and agreement with Indian tribes, be opened to settlement. From such lands we may reasonably anticipate cash payments of at least $8,000,000 under this section of the bill. Hence, we may reasonably anticipate that $10,000,000 will be paid into the Treasury under the operations of this section of the bill.

IN CONCLUSION—

Your committee has devoted great care and much time to the preparation of the accompanying bill. Every line has been carefully

scrutinized, and every interest affected has been considered and carefully weighed. Representatives of the Indian tribes and residents of Oklahoma have appeared before your committee and given the committee the benefit of their advice and experience. Believing the measure will afford great relief, that it will secure law and order in a large region of country, where lawlessness has heretofore prevailed, that it will tend to the civilization of the Indian and to the protection of his person and property, that it will vastly improve the condition of the 277,000 people who are most affected by its provisions, your committee earnestly recommend its passage.

All of which is respectfully submitted.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 67.

JUDICIAL DISTRICT OF NORTH DAKOTA.

FEBRUARY 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. ADAMS, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 6942.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 670) to subdivide the judicial district of North Dakota, having had the same under consideration, report the said bill, together with a substitute therefor, and recommend that the substitute bill do pass and that the original bill (H. R. 670) do lie upon the table.

This legislation is demanded by considerations of convenience and economy. It will secure a great saving to the Government as well as to the people of North Dakota by reason of the great distance to be traveled by litigants and witnesses and by the officers of the court if the existing law is not amended.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 68.

FRANK A. LEE.

FEBRUARY 15, 1890.—Committed to the Committee of the whole House and ordered to be printed.

Mr. CULBERSON, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 5674.]

The Committee on the Judiciary have had under consideration House bill 5674, and recommend its passage.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 69.

SHORTENING TERMS OF IMPRISONMENT ON ACCOUNT OF GOOD CONDUCT IN JAIL AND WORK-HOUSE IN DISTRICT OF COLUMBIA.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. De Lano, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill H. R. 5940.]

The committee have examined the bill and think it should be amended by the following addition:

Sec. 2. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

The committee have examined the Senate report on a like bill and beg leave to submit it as their report:

Hon. J. J. Ingalls,
Chairman Committee on the District of Columbia, United States Senate:

We, the undersigned, mission workers in the work-house and jail, respectfully present to you, and through you to the honorable members of the Committee on the District of Columbia, some reasons why Senate bill No. 1858, entitled "A bill to shorten the terms of imprisonment in the jail and the work-house of the District of Columbia on account of good conduct during imprisonment," now before your committee, should become a law.

Section 1131 of the Revised Statutes, relating to the District of Columbia, says: "All persons confined in the penitentiary for a term of years who conduct themselves so that no charge for misconduct shall be sustained against them, shall have a deduction of one month in each year made from the term of their sentence, and shall be entitled to their discharge so much the sooner, upon the certificate of the warden of their good conduct with the approval of the Attorney-General."

The above section applies to all persons sentenced to and imprisoned in the penitentiary by the courts of the District of Columbia. The provisions of this section are just and humane, and for the same good reasons that the terms of those imprisoned in the penitentiary for greater crimes are shortened on account of good conduct while in prison the terms of imprisonment for those confined in the jail and work-house of the District of Columbia for lesser crimes should also be shortened on account of good conduct during their confinment.

Blackstone says that punishment by way of imprisonment "is not by way of atonement or expiation for the crime committed, for that must be left to the just determination of the Supreme Being, but as a precaution against future offenses of the same kind."

The highest authorities agree in saying that the punishment should not only be without cruelty, vindictiveness, and injustice, but that the best and most effectual way to prevent crime and to treat crime when committed is that which is directed to the reformation of the offender; moreover, philanthropy, justice, and mercy alike demand this treatment.

The shortening of the terms of those confined in the jail and the work-house one-sixth of their time on account of good conduct would put each prisoner on his good behavior from the time he entered the prison door. A part of the sentence to imprisonment would then depend upon the offender's conduct, and the fact that they are not only able to shorten their terms of imprisonment by one-sixth of the time, but the further fact that they are able to have the same judge who sent them to prison

write in his docket across the face of the commitment sending them to prison the words, "Discharged by order of the court on account of good conduct during imprisonment," would arouse in many, if not in all, the better elements of their nature, and inspire them to lead correct lives when restored to their liberty.

Respectfully submitted.

Geo. W. Wheeler (in charge of mission work in the jail), Evelyn M. Maxson, Capt. J. H. Hitchcock, M. E. Hitchcock, Geo. W. Havell, A. T. Stuart, E. D. Bailey, Wm. C. Tyler, O. B. Brown, Chas. H. Middleton, Charlotte A. Van Doren (in charge of the mission work in the work-house), W. D. Blackford, C. H. Mytinger (minister), N. M. Ambrose, M. M. Mundell, J. Lizzie Bradley, A. L. Swartwout, P. S. Foster, N. A. Robbins.

Conforming to the views expressed in the forgoing petition, your committee report back the bill and recommend its passage.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 70.

CHRIST CHURCH, WASHINGTON PARISH, IN THE DISTRICT OF COLUMBIA.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. De Lano, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill H. R. 3296.]

The committee have examined the bill and think the following amendment should be made: In line 9, after the word "Parish" insert "otherwise called the vestry of Washington Parish." With this amendment the committee beg to submit the Senate report on a like bill.

Senate report is as follows and we make it a part of our report:

The committee to whom this bill was referred sent the same to the Commissioners of the District of Columbia, who requested the United States attorney for the District of Columbia and Col. John M. Wilson, U. S. Army, in charge of public buildings and grounds, to examine the bill and to report their opinion thereon. The Commissioners have returned the bill with the recommendation that it pass, which recommendation is based upon the accompanying reports of the said district attorney and Colonel Wilson.

This bill is framed to vest all of the title of the United States to square south of square 1092, in the city of Washington, in the vestry of Christ Church, District of Columbia, who are, by mesne conveyance, purchasers from the original proprietors of this whole square—George Walker and William Young. The following are extracts from the district attorney's report:

"All the proprietors of the lands upon which the city of Washington was laid out, with few exceptions, conveyed their holdings to two trustees, Thomas Beall, of George, and John M. Gantt, upon trusts, that a "Federal city" should be laid out upon them. The portion of the deed which affects the present inquiry provides for an equal division of all the building squares between the original proprietors and the commissioners appointed under the act of Congress establishing the temporary and permanent seat of the Government, the parts falling to the commissioners on the division to be sold and the proceeds applied to the erection of the public buildings.

"George Walker and William Young's heirs were the proprietors of tracts adjoining each other, and part of each of these tracts, in unequal proportions, were included within the limits of this square.

"The individual account of Walker with the commissioners (page 185) shows that he is charged with lots 2 and 3 in this square amounting to 37,621½ square feet; his original holding in the square was 14,727¾ square feet, and of this the commissioners were entitled to one-half; *the difference in his favor on this transaction is made up in favor of the commissioners by allowances from his interest in other squares.*

"The individual account of William Young's heirs with the commissioners shows (page 215) that they are charged with lots 1 and 4 in this square, containing 25,142¼ square feet; their original holding was 48,036 square feet, of which the commissioners were entitled to one-half, *and the difference in their favor in the transaction is made up in favor of the commissioners by deductions from their interest in other squares.*

"The above facts, in connection with the further entry in the book called 'Disposal of Public Lot No. 2,' which was prepared by Nich. King (surveyor of the city) in 1805, viz, 'square south of 1092, assigned to George Walker and the heirs of Wm. Young, the original proprietors thereof,' *show that the United States parted with all its interest in the square by the assignment of the whole of the same to said proprietors on the division; nothing was reserved.*

"*In my opinion the United States has no title to the square.* I would, however, suggest a reference to Colonel Wilson, with the request that he verify the statement of facts above made, in order that no mistake may be possible."

Colonel Wilson reports to the same effect.

An abstract of title of the Real Estate Title Insurance Company of the District of Columbia shows that the said vestry is entitled to the relief sought as being the ultimate grantee of the original proprietors, Walker and Young.

We report that the United States in 1800 were paid for their title to this square by the aforesaid settlement with the original proprietors, and that the said vestry is entitled to the relief sought, and we therefore recommend the passage of the bill.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 71.

PUBLIC BUILDING AT LANSING, MICH.

FEBRUARY 15, 1890—Referred to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. GIFFORD, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 6943.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 470) providing for the erection of a public building at the city of Lansing, State of Michigan, having considered the same beg leave to report as follows:

The city of Lansing is the capital city of the State of Michigan, and contains a population of about 15,000 people, and is growing rapidly in business as well as population. It is at present a manufacturing city of much importance. The production annually of its factories amounts in value to nearly $4,000,000, and the number of men engaged in such industry is nearly 4,000, and the weekly amount paid such is in excess of $35,000. These workmen are engaged in the production of stoves, wagons, carrriages, sleighs, potttery, etc. The building for which the bill provides will be used principally for the accommodation of the post-office. The postal business carried on at Lansing is very large, as will be seen by an examination as to the receipts for business at such office. The total gross receipts for stamps, papers, etc., for the year 1888, was $28,368.53, while the total amount for the year 1889 was $34,779.34, showing an increase for the year 1889, over that of 1888, of $6,428.81. The net receipts or profits of the office for the year 1888 was $13,482.87 and for 1889 $19,106.98, an increase of net income for the last year of $5,624.11. The total net receipts for the Lansing office for the last ten years amounts to the large sum of $140,000.

Lansing has the free delivery system, and five carriers are at present employed. About 25,000 people receive their mail matter at the Lansing office. The court for the circuit which includes the county of Ingham is held at Lansing, and all the terms of the supreme court for the State of Michigan are held in said city. The State officers are situated at Lansing and the legislature of course holds its sessions at said city. Some ten years ago a contract was entered into by the Post-Office Department for the rent of a building which was then in process of construction, and under such contract the Government was to pay the sum of $1,000 per annum, for the term of four years, for the lower part of such building for the use of the post-office. At the end of said lease the owner of such building exacted the sum of $1,200 per annum, and when the second lease expired the owner of such building demanded $1,500 per annum, and the Government was compelled to accept his terms. In about two years the lease will again expire, and the owner of this building, it is alleged, does not care to lease his building again

without a further increase in the rent therefor. The building is not at present of sufficient size to accommodate the business of the office. The bill providing for the construction of a public building at Lansing passed the Senate at the last session.

Being of the opinion that the public service requires such a building as the bill provides for, and that the amount mentioned in the bill will be required to construct such building and procure the site, we respectfully report such bill back with a substitute, in form suggested by the architect of the Treasury, and recommend that such substitute be passed (see exhibits A B C) and the original bill laid on the table.

EXHIBIT A.

TREASURY DEPARTMENT, OFFICE OF THE SUPERVISING ARCHITECT,
Washington, D. C., January 24, 1890.

SIR: In response to that portion of your letter of the 14th ultimo requesting such information as I may have, with my opinion, in regard to the advisability of Senate bill 306, introduced by Hon. Francis B. Stockbridge on the 4th ultimo, and the amendment thereto offered by him on the 19th ultimo, being Senate bill 1529, becoming a law, which bills provide for the acquisition of a site and the erection thereon of a public building for the use and accommodation of the United States post-office and other offices in Lansing, Mich., at a cost not to exceed $100,000, I have the honor to submit the following:

Copy of report dated January 3, 1890, addressed to this office by the Postmaster General.

Copy of report dated January 14, 1890, addressed to this office by the postmaster of Lansing, Mich.

After considering the statements in the papers above cited in connection with computations made in this office based upon the information contained in said reports, I am of opinion that a site can be procured and a public building erected thereon about 40x90 in dimensions, two stories high with basement, of fire-proof construction, including heating apparatus, fire-proof vaults and approaches, and excluding elevator service (which is not deemed necessary), within the proposed limit of cost, viz, $100,000, and that such a building would afford ample accommodations for the present and prospective needs of the Government offices to be located therein; also that in the interest and economy of the public service and the convenience of the public business, said bill should become a law, after being modified so as to eliminate the word "elevators" in lines 7, 12, and 66 of same.

Respectfully yours,

JAS. H. WINDRIM,
Supervising Architect.

Hon. LELAND STANFORD,
Chairman Committee on Public Buildings and Grounds,
United States Senate.

EXHIBIT B.

POST-OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER-GENERAL,
Washington, D. C., January 3, 1890.

SIR: In answer to your request of December 17, relative to the post-office at Lansing, Mich., which was acknowledged under date of December 19, I beg to furnish the following information, namely:

Status of post-office.

Items.	1878.	1888.
Clerk hire	$2,750	$3,200
Rent	800	*1,500
Fuel and light	280	*275
Salary of postmaster	2,300	2,700
Gross receipts	17,064	28,921

* Lease.

Present number of employés:

Clerks	5
Carriers	8
Total	13

Relative to the number of square feet of floor area needed to provide for the present and prospective postal business, I beg to state that you should correspond with the postmaster.

Very respectfully,

JNO. WANAMAKER,
Postmaster-General.

JAMES H. WINDRIM, Esq.,
Supervising Architect, Treasury Department, Washington, D. C.

EXHIBIT C.

UNITED STATES POST-OFFICE,
Lansing, Ingham County, State of Michigan, January 14, 1890.

DEAR SIR: Yours of December 17, asking certain information concerning this office, duly received. I am unable to give the figures of the business of the office for 1878, as the old books have been boxed up and stored away in the basement as we have no proper place for them. I have, however, gathered sufficient data from which to make a very close estimate of the earnings of that year in comparison with the earnings of 1888.

I also give you statement of earnings for 1888 and 1889, which perhaps will give you an idea of our business.

Very respectfully,

SEYMOUR FOSTER,
Postmaster.

J. H. WINDRIM,
Supervising Architect.

Comparative statement of earnings of Lansing, Mich., post-office, and other statistics relating thereto.

	1878.	1888.	1889.
Received from sale of stamps, stamped paper, waste paper, and box-rents	$18,000.00	$28,368.53	$34,797.34
Total expenses	7,000.00	14,885.66	15,690.36
Net earnings	11,000.00	13,482.87	19,106.98

Figures for 1878 estimated from best information obtainable.

The number of persons employed in post office, 15; annual rent under present lease, $1,500. But the lease expires in about two years and can not be renewed without a large increase of annual rental. The internal arrangement of the room will require remodeling to accommodate the increasing business, which will more than double in the next ten years. Population in 1880, 8,319; in 1890 (estimated), 15,000 to 17,000.

Conservative estimates place the commercial growth at more than double in the next ten years.

The cost of a suitable location for a public building would be $25,000 or more.

Respectfully,

SEYMOUR FOSTER,
Postmaster.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 72.

PUBLIC BUILDING AT GALESBURGH, ILL.

February 15, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Post, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 200.]

The Committee on Public Buildings and Grounds, to whom was referred House bill 200, having had the same under consideration, report it back and recommend its passage.

Galesburgh, Ill., is a prosperous and rapidly growing city of 17,000 inhabitants. From it railways radiate in eight directions: northeast to Chicago, northeasterly, crossing the Illinois River, to Chicago, east to Peoria and Indianapolis, southeast to Havana and St. Louis, south to Quincy, southwest to Kansas City, west to Council Bluffs and Omaha, and north to Rock Island and St. Paul. Extensive railroad shops, as well as other manufacturing establishments, are located there.

It has all the elements of general prosperity, including paved streets, gas-works, electric lights, a telephone system, and street railways.

It is the seat of Knox College and Lombard University, two of the most important institutions of learning in the West. All their buildings, as well as the eight public school buildings, are of brick, and of a most substantial character.

The county buildings located at Galesburgh are with their sites worth over $200,000. The court-house is of stone, and is not merely a model of architectural design, but an example of an economical and wise expenditure of public money, having in view convenience in the transaction of the public business, the safety of the records, and permanence in the structure itself.

For the business requirements of the municipality, county, and State, suitable public buildings have been provided; but for the Federal business adequate accommodations have not been furnished. For many years the rent for the dingy quarters occupied by the post-office was paid by private contributions. The present post-office is arranged as conveniently as it is possible to arrange that building; but it is insufficient for the growing business.

Four hundred and eighty-one thousand dollars was paid out last year on money-orders, and all the money-order business, amounting to nearly $1,000,000, is transacted in a room less than 10 feet square, in which artificial light must be used during the day when for accuracy the best light is required.

Some part of the large surplus of revenues collected at this office should be used to supply suitable accommodations for those who contribute it.

No building suitable for a post-office, having regard to the requirements of light necessary for the rapid and accurate performance of postal duties, and possessing the qualifications of safety insisted upon in the construction of such buildings, can be procured in the city.

The population and the postal business are steadily increasing. The inconvenience and inadequacy of the post-office accommodations and the necessity for a building have long been felt. A similar bill, appropriating the same amount, was favorably reported to the Fiftieth Congress.

The postal business for the year ending June 30, 1889, was as follows:

Gross receipts	$28,920.73
Total expenses	14,026.98
Net receipts	14,893.75

	No.	Amount.
Domestic money-orders paid	61,645	$423,791.84
International money-orders paid	2,895	22,435.17
Postal-notes paid	15,251	35,099.64
Total	79,791	481,326.65

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 73.

SITE FOR POST-OFFICE, WASHINGTON, D. C.

February 15, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Milliken, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 407.]

The Committee on Public Buildings and Grounds, to whom was referred bill H. R. 407, to authorize the acquisition of certain parcels of real estate embraced in square No. 380 of the city of Washington, to provide an eligible site for a city post-office, report as follows:

That there is no public building in Washington for a city post-office; that the post-office is now kept in a building which the Government rents which is utterly unfit for the purpose for which it is used; that it is an old building, in bad condition, and contains but 20,000 square feet of floor space, while the present postmaster states that 50,000 square feet of space are needed for the convenient working of the force in his office; that there is no protection for the records and Government property in said building from destruction by fire; that the place is unhealthy as well as inconvenient, and that the owners of it now claim a rental from the Government of $8,000 per year.

The committee report that the site provided in the bill accompanying this report, is bounded on three sides by streets; that it is so shaped that a building covering it can be lighted without using any part of the ground floor for a well-room or coast; that the Supervising Architect of the Treasury estimates that the plan of a post-office building upon said lot submitted to him would afford 78,000 square feet of floor space exclusive of the basement, and the same can be built complete for $800,000, giving 28,000 square feet more than the present postmaster says is now needed, and so planned and built that several stories could be added to it, if found necessary, in future; and he further states that there are 327 persons employed in the present city post-office. The receipts of the office for 1889 were $436,255.20, but it must be remembered that the great bulk of mail matter handled in the Washington City post-office consists of official free matter, so that the receipts are not a correct indication of the amount of work done and space needed. The number of pieces of mail handled in 1889 was 34,501,848.

The site provided in the accompanying bill is at the corner of Pennsylvania avenue and Ninth street, where, or near which, all the car lines in the city, with one exception, pass. Where all the avenue herdics pass and the people pass in going to market, and the price asked for the land is less than one-half of the price of land on the north side of the avenue and less than the price of land on the south side of the avenue in the immediate neighborhood, and the price of the lot is less than that of any lot offered to the committee.

The committee therefore recommend that the bill be passed, with the following amendments, viz:

(1) Strike out, in line 4, the word "State," and insert in lieu thereof the words "the Treasury."

(2) Add, at the end of line 13, section 1, the following words, viz: "And cause to be erected thereon a suitable, commodious, and substantial building, including fire-proof vaults, heating and ventilating apparatus, elevators, and approaches for the use of a United States post-office in the city of Washington, D. C., the cost of the same not to exceed eight hundred thousand dollars, amounting to ten hundred and seventy-five thousand dollars in all, for the site, building, approaches, vaults, heating and ventilating apparatus, elevators, and approaches complete."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 74.

PUBLIC BUILDING AT ASHLAND, WIS.

February 15, 1890.—Committed to the Committee of the whole House on the state of the Union and ordered to be printed.

Mr. Gifford, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 4652.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4652) providing for the erection of a public building at Ashland, Wis., submitted the following report:

The city of Ashland is the largest and most important center upon Lake Superior, in the State of Wisconsin. It is located upon a magnificent harbor and enjoys an extensive trade and commerce. Its growth has been rapid and its population and business are yearly increasing, showing conclusively that it is firmly established and destined to become one of the leading and commercial centers in that State. In 1880 the population of Ashland, according to the Federal census, was but 951. From about this date its era of prosperity dates. The State census of 1885 shows that its population had increased to 4,844. Its present population, as estimated by the school census of 1889, is very nearly 16,000.

The following well authenticated statement of the value of improvements for the last five years shows that the place is not only rapidly growing, but that the improvements are of such a nature as to furnish a guaranty that it will continue to grow:

Amount expended 1885 *to* 1889.

1885	$300,000
1886	881,000
1887 (including two immense ore docks extending into the bay, costing nearly $1,000,000)	2,234,790
1888	921,350
1889	1,095,190
Total in five years	5,432,330

It is the county seat of Ashland County, with a population of a least twenty-five thousand people. The city has three national banks, with a capital and surplus of $350,000. It is an important railroad center, being the Lake Superior terminus of four important railways, viz: The Northern Pacific, the Wisconsin Central, the Milwaukee Lake Shore and Western, and a branch of the Chicago, St. Paul, Minneapolis and Omaha. By these lines the city of Ashland is connected with the Duluth, South Shore and Atlantic and the Minneapolis and Sault Ste. Marie railways, thus connecting the city with every important railway system in the Northwest. Its manufacturing industries are represented by the largest charcoal blast-furnace in the world, turning out 100 tons

of Bessemer pig-iron daily, seven large saw-mills, with a manufacturing capacity of nearly 200,000,000 of lumber annually and employing nearly 1,500 men the year around; two sash and blind factories, four planing-mills, three machine-shops, and one of the largest iron foundries and iron manufacturing plants in the State.

The city has good schools, well-established and well-supported churches of all creeds, street railways, electric and gas light plants and a full and complete system of water-works. The value of the commerce for the year just past very closely estimated is as follows:

Ore	$9,000,000
Coal	1,100,000
Pig-iron	257,000
Lumber	2,500,000
Railroad iron	100,000
Salt, cement, and brick	18,000
Oil (light and lubricating)	75,000
Brown stone	130,000
Merchandise	5,000,000
Machinery	1,525,000
Railroad supplies	29,678
Miscellaneous	1,500,000
Total	21,257,678

To accommodate this vast business requires sixteen lumber docks, two merchandise docks, two coal docks, and three of the largest ore docks in the world.

The Government business transacted in that city has shown a steady and growing increase for the last ten years. The post-office business for 1889 shows receipts $14,092.96. The money-order business for same time was $56.184.28. The total pieces of mail handled was 1,356,578. The United States land office located at this place, for the year 1889 disposed of 53,130 acres of land. The La Pointe Indian Agency located at this place transacts business amounting to from $100,000 to $200,000 annually. The Government officials in all these offices need better accommodations for doing the public business and a safer place to keep their records, papers, and documents; especially is this true of the land-office and Indian agency. It is true the rents obtained by the Government at the present time are very reasonable, not exceeding $2,000 for all these offices, but it is also true that when the present favorable leases expire, as good accommodations can not be had at less than double the amount now paid. The deputy port collector at present has no office provided for him, but the business has grown to such an extent that one is absolutely necessary to accommodate those who have business to transact.

The price of land at any eligible point for a public building is increasing each year, and, as the Government should be provided with a building of its own, it is economy to move in the matter at once. Neither the post-office, the land-office, or the Indian agency are at present in fire-proof buildings, and safety and economy require the action contemplated by this bill.

The committee, in consideration of the foregoing facts, recommend that the bill H. R. 4652 do pass, with the following amendments: Strike out the word "one" in the twelfth line and the word "hundred" in the thirteenth line, and insert the words "seventy-five" in the thirteenth line; also strike out the words "one hundred" in the twenty-second line and insert the words "seventy-five."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 75.

BRIDGE ACROSS THE MISSISSIPPI RIVER AT OR NEAR CLINTON, IOWA.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Sweney, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 1866.]

The Committee on Commerce, to whom was referred the bill (H. R. 1886) to amend the act authorizing the construction of a bridge over the Mississippi River at or near Clinton, Iowa, having had the same under consideration, report the same back with a recommendation that the following be substituted for section third thereof, to wit:

Sec. 3. That in case the bridge authorized at or near Clinton, Iowa, by an act approved July 16, 1888, be constructed in the immediate vicinity of the existing railroad bridge, the length of spans required by said act may be so modified as to make the clear channel-ways correspond in length and location to the clear channel-ways of the existing bridge: *Provided*, That in the opinion of the Secretary of War the interests of navigation be not materially affected thereby.

And that as so amended that it do pass.

A bill in exact terms with this was introduced in the Senate, but applying to the Burlington, Iowa, bridge bill, and the Senate made this substitution in that bill, and it has so passed both the Senate and the House, and we adopt it as expressly applying to this bill and as being right in itself.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 76.

TO TRANSFER THE REVENUE-CUTTER SERVICE FROM THE TREASURY DEPARTMENT TO THE NAVY DEPARTMENT.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. H. C. Lodge, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6944, substitute for H. R. 71 and H. R. 450.]

The Committee on Naval Affairs, to whom were referred the bills (H. R. 71 and H. R. 450) to transfer the Revenue-Cutter Service from the Treasury Department to the Navy Department, report the same back with amendments in the form of a substitute (H. R. 6944), and recommend that the said substitute be concurred in and the bill do pass.

For the information of the House and as the reasons for our recommendations we submit the following:

The Revenue Marine Service was organized in 1790, upon the recommendation and advice of Alexander Hamilton. The leading feature of the organization was to give naval rank and authority to its officers, and place its vessels and crews upon a similar footing in regard to drill and discipline as a regular vessel of war, but for the convenience and dispatch of the public business to attach it to the Treasury Department. Accordingly, its vessels are provided with a full armament of cannon and small-arms, its officers and men are trained and made proficient in the use and management of such weapons, and Congress has conferred naval rank upon the officers, and they are compelled to wear a uniform bearing the insignia of such rank.

Congress has constantly treated it as a part of the naval force of the country; to this end adding to the number of its vessels and strengthening their armament and crews on several occasions of threatened war, and providing by law that the President may in his discretion place its vessels on active naval service. Its officers are commissioned by the President and confirmed by the Senate in like manner as those of the Army and Navy.

Following these objects of its creation, the Revenue Marine has borne an important part in every war in which the nation has been involved. Its vessels, always ready at a moment's call, have been the first armed force to repel a foreign enemy or aid in the prevention or settlement of international complications. Its officers have received a due proportion of honorable scars in the country's defense.

They are empowered to quell mutinies, capture slaves, destroy pirates, and in time of war, attack and capture vessels of the enemy. The act of Congress, June 14, 1797, authorized the President to "cause revenue-cutters to be employed to defend the sea-coast, and to repel hostility to the vessels, and commerce within their jurisdiction."

In a communication to Congress, 1790, relating to revenue-cutters, Alexander Hamilton, Secretary of the Treasury, recommended giving the officers naval rank, "which", he said, "will not only induce fit men to engage, but will attach them to their duties by a nicer sense of honor."

In October, 1798, the President "with a view of producing concert of action of the naval forces of the United States, placed the revenue-cutters at the disposal of the Secretary of the Navy," and seven of them were accordingly employed in the West Indies, during the quasi French war, and afterward in the suppression of piracy in that quarter.

By act of Congress, March 2, 1799, the President was authorized to direct the revenue-cutters to co-operate with the Navy, as well in peace as in war.

In the war of 1812–'14 the revenue-cutters were employed as dispatch boats and for coast defense. On several occasions they encountered the enemy with great bravery and credit, notably in the case of the cutter *Surveyor*, which was captured by an overwhelming force from the British frigate *Narcissus*, after a defense so desperately brave as to cause the British captain to return to Captain Travis his sword, with a letter bearing admiring testimony to his gallant conduct.

In 1836 several revenue-cutters participated in the Seminole war, and maintained a high reputation for the service.

In 1858 the steam-cutter *Harriet Lane*, commanded by Capt. John Faunce, U. S. Revenue Marine, served in the Paraguayan expedition, and was of incalculable value to the fleet.

During the civil war the steam-cutter *Harriet Lane* shared in the attack on Hatteras Inlet, the cutter *Miami* in that on Sewall's Point, while the *Naugatuck* was with the gallant Rodgers in the attack on Fort Darling by the iron clads, and her captain badly injured.

Several revenue steamers performed valuable service in Chesapeake Bay in preventing the smuggling of supplies from North to South, and Captain Dungan, of the service, was shot dead while rescuing Union refugees from the Virginia shore.

Since the war the vessels of the service have performed military duty in protecting the inhabitants of Alaska from murder and outrage by the Indians.

It thus appears from its history that the naval character of the Revenue-Cutter Service has been recognized from its foundation by its employment in warlike operations in every war in which the country has engaged, by its prescribed duties, by the armament of its vessels and their crews, and by uniforming and giving naval rank to its officers.

The policy of transferring the Revenue-Marine Service to the Navy, as proposed by this act, is not a new one. In 1882, Mr. Chandler, then Secretary of the Navy, said in his report:

The Revenue-Cutter Service affords a proper field for the employment of naval officers. The duty is directly in the line of their profession. They are fitted for it, both by training and experience; and if they could be so employed without detriment to the interests of the existing corps of officers, a great and permanent benefit to the Government and to the Navy would result.

The service of the cruising cutters is strictly naval. The duties of the officers are not distinguishable in kind from those of naval officers. The discipline is naval, as far as naval discipline can be carried on outside the Navy Department.

The cruising cutters carry an armament of from one to four guns. The crew are armed with small arms. The broadside guns are furnished by the Navy Department. In time of war these vessels have always been pressed into the naval service.

At the date of the annual report of 1881 there were 36 vessels in the Revenue Marine. Deducting the 8 vessels on harbor duty and 5 sailing vessels, there remain 23 steamers, 15 of which are propellers of from 131 to 403 tons; and 8 are side-wheel

steamers of from 201 to 499 tons. These 23 vessels, which may be classed as gunboats, are good vessels of their class, and must always be regarded as a part of the available naval force.

The experience acquired by junior naval officers, if employed in the cutter service, in cruising on our coast, and in assisting vessels in distress, would be of direct benefit in their profession, and to the country in case of war. They would acquire a familiarity with the coast and a knowledge of local pilotage that could not otherwise be obtained. They would have practice in the handling of small vessels under difficult circumstances. Employed at first in the lowest rank, they would readily acquire whatever might be new or peculiar in this branch of the service.

In the interests of economy the change suggested is desirable. While the Navy proper is being reduced, the Government is keeping up a revenue navy of 34 captains, 86 lieutenants, and 65 engineers; in all, 185 officers. Two training schools are maintained to do the work of one. The Naval Academy at Annapolis is supplied with a full corps of instructors and every appliance for the training at all times of 335 naval cadets. At the same time, another school is maintained at New Bedford for the training of Revenue-Marine cadets, covering the same ground, only in a limited degree, and with imperfect appliances. The Revenue-Marine cadets receive $900 a year during their service at the school. Recent legislation has provided that only a part of each graduating class at Annapolis shall enter the Navy, while the remainder shall be given a year's pay and remanded to private life. All these young men, upon whom the Government has bestowed a gratuitous education, are well fitted for their profession, from which they are thus excluded; and by opening the cruising cutter service to these graduates of the Naval Academy, the Government will save, at a single stroke, the whole cost of a duplicate establishment.

In order to harmonize all the interests involved in connecting naval officers with the revenue cutter service, the administration of the two services should be combined under the Navy Department. The small vessels employed on harbor duty, which are only used to carry inspectors of customs, and as a sort of harbor police, should remain solely attached to the Treasury, as at present. The duty is not such as to require a special corps of officers. The cruising cutters should be transferred to the Navy Department; but they should be assigned to duty in the various districts, as at present, upon the requisition of the Secretary of the Treasury, and their movements may be directed for the time being by the collectors of customs. The present Revenue-Marine officers should become a corps in the Navy, receiving life commissions as naval officers, with all the rights and privileges that belong to such commissions, while the vacancies gradually made at the foot of the list should be supplied by the detail of junior officers of the Navy of corresponding grade, for service on board the cutters.

It is not proposed to remove the present officers of the Revenue Marine, or to take away or abridge, in the slightest degree, their privileges or emoluments. On the contrary, they would retain all that they now enjoy, and, without re-examination or a new test of any kind, would receive in addition the benefits of a permanent naval commission. Vacancies in the upper grades should continue to be filled by promotion in the corps, and naval officers should only be detailed as vacancies are made at the bottom of the list. The duties of the Revenue Marine officers would remain the same as they now are; and it should be particularly provided, in any change that might be made, that their position should in no way be altered, except by giving all, including the engineers, the same permanency of tenure now enjoyed only by naval officers, and the same right of being placed upon the retired list of the Navy in case of extreme age or disability—changes in every respect advantageous.

If it is not the policy of the Government to make appropriations for sufficient ships of war to give adequate occupation to all our naval officers, it should certainly make use of them in every branch of the public service for which they are fitted. A highly trained corps of officers, such as modern naval warfare demands, can not be created in a day. If the personnel of the Navy is to be kept at its present standard of quality and numbers, it must be utilized in every form of Government employment for which it is adapted. In this view it hardly admits of question that the Revenue Marine should be joined with the Navy. No disturbance of vested interests would be caused by the transfer; on the contrary, every provision would be made to guard against such a disturbance. But a new field would be opened for the services of officers already at the disposal of the Government, which by their training they are in every way qualified to occupy.

Interesting information and suggestions concerning the Revenue Marine, prepared, by orders from the Navy Department, by Master George H. Peters.

Mr. Chandler discussed the subject again in his report for the year 1883 as follows:

The duties of the Revenue Marine, as officially defined, consist in cruising for the prevention of illicit trade, and for the enforcement of certain laws applicable to

shipping, particularly those requiring the registry, enrollment, and license of vessels, compelling life-saving appliances to be kept therein, the name and hailing port to be affixed, and lights to be exhibited; prohibiting the overloading of passengers, assessing the marine-hospital tax, and aiding in the quarantine service of the States. The cutters further assist in enforcing the neutrality laws, and those for the suppression of piracy, and for the protection of the timber reserves. They are also called upon to prevent unlawful traffic in rum and fire-arms in Alaska; to protect the seal-fisheries, to suppress mutinies and extinguish fires on board merchant vessels, and to carry out the laws in aid of distressed seamen.

Several of these duties, such as the enforcement of the neutrality laws, the suppression of piracy, of mutinies on board merchant vessels, and the like, the ships of the Navy are now charged with and actually perform in common with revenue vessels. Of the rest, there is not one that is foreign to the general purpose and scope of the naval officer's profession. The only duty connected directly with the customs is that of the seizure of smugglers—a duty which is precisely similar to the naval officer's duty of searching and seizing, during war, vessels engaged in contraband trade. It requires a knowledge of the statutes relating to the subject, a knowledge not very difficult to acquire; but beyond this nothing that is outside of a naval officer's necessary training. The duties of both services are identical in their general nature, only they operate in different localities. Both cruise to protect the maritime interests of the Government and to render assistance to American vessels—the one on the coast, the other, in addition, at sea and in foreign waters. One polices the shore, the other the ocean. In war both engage in naval operations.

The practical identity in the character of the Naval and the Revenue-Marine Services lies in the fact that they are both nautical and military. That the Revenue Marine is a nautical service requires no proof. It is nothing if not nautical. That it is a military service was officially asserted by the Treasury Department in the report on the service for 1881, in these words:

"The Revenue Marine, while charged by law with the performance of important civil duties, is essentially military in its character. Each vessel is provided with great-guns, and furnished with as full a complement of small-arms for its crew as any ship of war. Its officers are required to be proficient in military drill and possess a thorough knowledge of the uses of both great and small-arms. Its crews are required to be instructed from day to day at the great-guns and in the use of the carbine, pistol, and cutlass. Commanding officers are required, while boarding vessels arriving in ports of the United States, in case of the failure or refusal of any such vessel, on being hailed, to come to and submit to the proper inspection by an officer of the service, to fire, first across her bows as a warning, and, in case of persistent refusal, to resort to shot or shell to compel obedience. In the performance of this work they are likely at any time to receive injuries, and be subjected to the same dangers in time of peace as the force employed on naval vessels.

"By the act of March 2, 1799, it is provided that 'the revenue cutters shall, whenever the President so directs, co-operate with the Navy.' It will be observed that the co-operation of the two services prescribed in the act above quoted is not contingent upon a state of war or other particularly perilous conditions. On the contrary, it may take place in time of peace and for pacific purposes, and when less hazard is involved to the two services than pertains to the discharge by a revenue vessel of its ordinary duties. * * * It is difficult to conceive that discrimination could be made by the law between services subjected to equally hazardous and equally important military duties, both in time of peace and in time of war. * * * Objection to granting pensions for the revenue-marine officers and seamen has been made on the ground that such action would be extending this bounty to civil employés of the Government, a policy to which our legislative traditions, so to speak, are opposed. But if in legal theory they are civil employés are they so in fact? Are they less positively a part of our military force in time of war than the Army or Navy? It is true revenue vessels are not to be ordered into action on purely military service, offensive or defensive, except the President so direct; neither are vessels of the Navy."

The above clear and precise statement, showing that the so-called Revenue Marine is simply a coast navy, is without doubt correct and just. It is because it forms a part of Government work in which officers and seamen are employed to navigate Government vessels at sea, from port to port, that it may fitly become a part of the naval establishment. If the present system of military instruction is so defective that the officers of the revenue navy are not made naval officers, it would seem that some other system should be adopted to that end, seeing that they are "subjected to equally important and equally hazardous military duties, both in time of peace and in time of war," and that they are no less positively "a part of our military force in time of war than the Army or Navy." If, on the other hand, naval officers now have too little practice in coast navigation, a method should be devised of giving them such practice at once, for there is nothing more essential than this to success in the operations of modern warfare.

The plan proposed with these objects in view included the transfer to the Navy Department of the cruising cutters, their officers and seamen (excepting the harbor boats used by the inspectors of customs, which do not require a special corps of officers), the organization of the officers transferred as a Revenue Marine Corps in the Navy, upon a footing precisely similar to that of the present naval officers, and the gradual employment of junior officers of the Navy in this service as vacancies occur at the bottom of the list. Such a measure would accomplish the desired result while protecting effectually the interests of the existing corps.

Secretary Tracy, in his report for the year 1889, says:

The recommendation is made by the Board of Visitors at the Naval Academy that the officers of the Revenue Marine Service should be taken from the graduates of the Academy. This suggestion is sound and timely, but does not go far enough. The extravagance of maintaining in the United States what are practically two navies, one for ocean service and the other for coast service, supplied by two naval academies, one of which discharges half of its pupils at graduating, has at different times been pointed out, and nowhere more forcibly than in the reports of the Secretary of the Navy for 1882 and 1883 (which have just been quoted).

The Department therefore strongly recommends a consolidation of the coast-guard navy and the ocean navy. It is believed that no practical difficulties lie in the way of its accomplishment. The present Revenue Marine, composed of some two hundred officers, should be taken bodily into the naval service and organized as a separate corps, to be known as the Revenue Marine Corps of the Navy, subject in all respects to the laws and entitled to all the privileges which attach to the naval commission.

The interests of the existing Revenue Marine officers being thus carefully guarded, their employment and emoluments will continue as at the present time. As vacancies occur at the foot of the list they should be filled, not by special appointment, but by the temporary detail of junior naval officers, thereby diminishing the number of cadets discharged each year from the graduating class at the Academy. As the numbers of the Revenue Marine Corps decrease, the number of junior officers of the Navy employed on the duty would increase, until, in the course of time, the corps would pass away by the operation of natural causes, such as retirement, death, and resignation.

As to employment, the officers of the Revenue Marine Corps, as long as it lasted, and those of the Navy supplying the places made vacant in the corps, would perform the duties now incident to the Revenue Marine. The harbor boats now used by the inspectors of customs, which do not require a special corps of officers, should remain, as at present, exclusively under the customs service, as the light-house tenders are under the Light-House Board. The cruising cutters, however, should be officered and manned by a force fully incorporated in the naval organization.

The duties of the Navy and Revenue Marine are identical in general character, and differ only in their administrative objects. One polices the ocean, the other the coast. The seizure of smugglers, the only duty of the Revenue Marine that has direct relation with the collection of customs, is precisely similar to the duty of naval officers in seizing vessels engaged in contraband trade in time of war. Other duties of the Revenue Marine, such as the enforcement of the neutrality laws and the suppression of piracy and of mutinies in merchant vessels, are now actually imposed on and performed by the Navy in common with the sister service.

The rescue of distressed vessels and seamen on our coast is as much the duty of naval as of revenue officers, and the only reason why the former do not perform it is because they are not on the coast or have no suitable vessels for the service. For the other miscellaneous duties of the Revenue Marine, such as the enforcement of the laws applicable to shipping, the prevention of unlawful traffic in fire-arms in Alaska, and the protection of the seal fisheries in Behring Sea, naval officers are perfectly well fitted. Finally, in time of war both law and custom sanction the employment of the Revenue Marine in naval operations.

The practical identity of the services lies in the fact that both are nautical and both are military. There is absolutely no reason for a distinction between them, and a consolidation would inure equally to the advantage of both; and it is believed that the officers of both services would regard the change with favor. The Revenue Marine would be placed on a substantial footing, absolutely the same as that of naval officers, and could not fail to find satisfaction in being connected with the past traditions and future development of the Navy. The junior naval officers, who would gradually obtain employment in the cutters, would find the service of great practical benefit, and the knowledge they would thus obtain of the pilotage of our own coasts and harbors would be an overwhelming advantage to the Government during their whole professional career. Finally, in the interests of a sound economy, the consolidation must sooner or later take place, and the sooner it comes the better it will be for the country, for the Navy, and for the Revenue Marine.

The purpose of the present bill is to embody the policy recommended by Secretaries Tracy and Chandler, and it will be seen from the following letters that this bill has the approval not only of the Navy Department but of the Treasury Department as well:

NAVY DEPARTMENT,
Washington, January 4, 1890.

My DEAR SIR: I have the honor to return herewith the copy of House bill 450 transmitted to me with your letter of the 2d instant.

In reply to your request that I should make any observations or suggestions occurring to me in reference to this bill, I have to say that having given it a careful and detailed examination, I have no alteration to suggest and heartily approve of it, and would recommend its passage not only in the interest of the two services concerned, but also in that of the Government generally.

In this connection I beg to inclose a copy of my Annual Report and to ask your attention to the portion marked, which deals directly with the subject to this bill.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Hon. CHARLES S. BAKER,
Chairman Committee on Commerce, House of Representatives.

TREASURY DEPARTMENT,
January 9, 1890.

SIR: I have respectfully to acknowledge the receipt of your letter of the 2d inst., transmitting for my examination and views House bill 450, providing for the transfer of the Revenue-Cutter Service from the Treasury Department to the Navy Department, and in reply have the honor to state that I have examined the bill with the view to the interests of the Government and the officers concerned, and that it meets with my approval.

The bill is herewith returned as requested.

Respectfully, yours,

W. WINDOM,
Secretary.

Hon. CHARLES S. BAKER,
Chairman Committee on Commerce, House of Representatives.

This bill is also strongly urged by the officers of the Revenue Marine Service, as will be seen by the following petition and the statement of reasons accompanying it:

Hon. WILLIAM WINDOM,
Secretary of the Treasury:

SIR: We, the undersigned, commissioned officers of the United States Revenue Marine, represent that for many years efforts have been made before Congress, always with the approval of the honorable Secretary of the Treasury for the time being, looking to the promotion of the interests of our service; that of the numerous appeals made, whether through bills presented to Congress, or upon the recommendations by your honored predecessors, not one has been successful. We now appear before you as petitioners earnestly invoking your aid to obtain, through the national legislature, the relief we seek from the injurious distinctions which exist between the Revenue Marine and kindred branches of the public service. To this end we have the honor to submit what follows as setting forth some of the most glaring and undeniable facts bearing upon the disadvantages under which we labor.

While many of our duties (mainly those which pertain to the customs service) are characteristic of the civil establishment, our organization, training, discipline, naval rank (conferred by law), the equipment and armament of our vessels—all are military. Thus, while allied to both the civil and military services of the Government, and constantly discharging functions common to both, we are upon an equal footing with neither.

The hours of duty or labor required of the civil employé of the Government are fixed by law, are comparatively few, and confined to daylight, usually from 9 a. m. to 4 p. m. He is subjected to no sudden or unusual calls which demand of him an ex-

hibition of manly fortitude or courageous effort, and never to risk his life to save others; no life or property is ever in jeopardy for the loss of which he can be held, even remotely, responsible; when his office hours end his work is done, and the rest of the day is his in which to do what he will; overtaken by sickness his pay goes on and no reduction is made; he is given by law thirty days' leave of absence each year, without forfeiture of salary; he can choose his own home and secure its privacy; here he can gather about him his household gods, and enjoy the congenial circle of friends of his choice, live in accord with his tastes and within his means; he has but the one home to maintain, and, by being constantly at its fireside, can practice such economy of his means as will secure him against privations in his declining years; he experiences no more of the vicissitudes of life than the ordinary salaried man of business—hardly so much, because his income is assured; should sickness or death invade his home he is always within call; he can devote his leisure to such interests and occupations as taste and inclination may dictate, thus gratifying desires which render life most endurable, while not a few instances can be cited wherein the incumbents of public office thus circumstanced have been enabled by the leisure afforded them after office hours to qualify themselves for the practice of the law, medicine, and other professions; in short, the choice is left to him whether he will be a drone in the hive or become a useful citizen, fitted to cope with his fellow men in any or all the avenues of life.

On the other hand, the officer of the Revenue Marine has no settled home or habitation; he is, by force of circumstances, a nomad; he has two separate and distinct establishments to maintain—his own temporary resting place on shipboard and the equally transitory lodgings of his wife and family on shore; he is confined to cramped and inconvenient quarters, in which, for the most part, decent privacy is denied him; he inhabits, with half a dozen others, a room 10 feet by 18 feet—here he must eat, sleep, perform his ablutions, receive and entertain his friends, and break his daily bread with the congenial and uncongenial alike; his sleeping berth is barely large enough to contain his person; his comforts are such as he can catch as his life wears on; his hours of duty embrace the night as well as the day, and cover the whole twenty-four; he is burdened with the responsibility of many lives, as well as with the care incident to the safety of the property confided to his skill and courage; he must brave the terrors of Arctic seas and face the rigors of the terrible winters of our northern sea-boards; he must expose himself to the malaria of our Southern harbors, and to the yellow fever in the Mexican Gulf; he must cheerfully leap from his berth at midnight to obey, often half-clad, amid storm and tempest, the summons to save life and property. Amid all discomfiting and discouraging circumstances, in the faithful execution of his duty, his voice must be heard above the tumult and din cheerily encouraging his subordinates and giving to them the example of a leader for their emulation. Stricken ill, in the line of duty, he is rewarded for his abnegation of self by having his already slender pay cut down, and this at the very time he most needs it; and so, absent from wife and children, home and friends, he fares as best he may; if he visits his wife and children after long absence, "on leave," he must pay for the privilege by having his pay reduced for the duration of the leave, be the same one day or thirty; placed on "waiting orders," whether to satisfy an exigency of the service, or other, he must quietly submit, have his pay reduced, and defray his own expenses out of what is left to his post office address.

The naval officer receives larger pay in the same rank, and holds higher rank for the same service; his ordinary duties are less constant, less arduous, and less dangerous; his is a deep-sea service; ours a coasting service, which is the most hazardous and trying known to the sea-farer. His pay is not cut down when sick, and he is entitled to thirty days' leave each year with full pay; if placed on "waiting orders" he is furnished transportation to his place of residence; he has constantly before him the incentive of higher rank; but, without that, his salary increases with length of service; wronged, he can appeal to a court of his peers, and no harm can come to him save through the sentence of such a court; if he loses his life in service, his widow becomes a ward of the nation; when rendered unfit to discharge the functions of his commission, by reason of the infirmaties of age or other disability, he is retired upon a competency and can spend his declining years in honor and comfort, earned by a life's devotion to duty. Every right and privilege enjoyed by the naval officer is carefully vested and guarded by law.

The officer of the Revenue Marine has none, can claim none of these things, and yet there is not a single valid reason that has ever been or can be advanced as argument for granting them to officers of the Army, Navy, and Marine Corps which does not apply with equal force in behalf of the Revenue Marine officer. He discharges the multifarious, often delicate and always onerous, trusts imposed upon him, cheered by no expectation of honors, incited by no hope of other reward than a consciousness of duty performed. He has not a single vested right by virtue of the com-

mission he holds. There is not a line in the statutes which guarantees to him a fair and impartial trial by his peers, that he may escape oppression and injustice. Neither is there a word in the law that places him upon an equal or fair footing with his brother sea-farer of the Navy as to rank, compensation, rights, or privileges, and yet the duties and life of the one are strangely in consonance with the other, any existing differences being entirely favorable to the naval officer.

Thus we have endeavored to lay before you as briefly as possible a few of the salient reasons which actuate us in seeking relief, and having, as we believe, exhausted effort in other years to secure some of the rights and privileges to which we are justly entitled by virtue of our commissions and the service upon which we are employed, and which are so freely bestowed upon and guarantied to the naval service, to which we are kindred, and failed, and believing, furthermore, that it is the unmistakable purpose that no measure looking to the retirement and pensioning of civil servants of the Government can pass Congress, we conclude that our best hope of obtaining what we seek is by transfer to the Navy, and we invite your able scrutiny, Mr. Secretary, of the proposed provisions of Senate bill 3924, which is designed to effect this. We respectfully submit that under the provisions of this eminently conservative measure no possible injury can result, and we earnestly contend that great good must accrue to the public service should this bill be enacted into law. Only the professional and military portion of the service would be affected by the pending measure; the force now at the disposal of the Treasury Department would be augmented, while your control of its operations would remain unimpaired, thus insuring the continued performance without friction of the duties now imposed upon the Revenue Marine; the transfer sought would relieve your Department of the innumerable and vexatious details of a technical service, numbering 200 officers, 1,000 men, and a fleet of 40 vessels, while it would continue to obey, as now and heretofore, your mandates and the behests of law.

We who ask your favorable consideration, Mr. Secretary, of the measure submitted, constitute a large majority of the officers of the service whose destiny is affected by it, and we do most earnestly commend to you the assuredly undeniable fact that we, of all men, must hold most dear to our hearts and understandings the interests of the service in which we have the honor to hold commissions. We have won our present positions upon the lists, step by step, from the lowest grades known to the service; many of us have spent our lives from youth to manhood, and grown gray under the flag which our vessels wear, and we earnestly contend that, as compared with the Army, Navy, and Marine Corps, whose peers we are, the Revenue Marine is the poorest paid, least provided for, and hardest worked organization of commissioned officers in the service of the nation. Notwithstanding the withering disadvantages under which our service has always labored, we point with just pride to its record for efficiency and devotion to duty, whether it be amid the ice floes of Arctic seas, the winter tempests upon the rock-bound coast of New England, or in the fever-infected ports of our coasts bordering the Gulf of Mexico. From the performance of the arduous and exacting duties of the Revenue Marine for almost a century to the establishment and development of our great Life-Saving Service, which is without a peer on this globe, in which our officers have taken an active and conspicuous part, the record is unblemished and fairly incomparable.

In conclusion, sir, we beg you to take into consideration all these matters, and we ask most respectfully but most earnestly that you will lend us your powerful aid in our struggle for that recognition which so long has been withheld—and we entreat you to declare, when you come to give answer to the question we submit, if we are not justly entitled to the practical recognition of our services, the tangible reward we seek.

We have the honor to be your obedient servants,

John Faunce, Captain, U. S. R. M.; Thomas S. Smyth, First Lieutenant, U. S. R. M.; Daniel F. Kelley, Chief Engineer, U. S. R. M.; Alfred Hoyt, First Assistant Engineer; E. F. Hedden, Second Assistant Engineer; C. F. Shoemaker, First Lieutenant; G. L. Carden, Third Lieutenant. Third Lieut. W. V. E. Jacobs, Third Lieut. P. H. Brereton, Asst. Eng. H. C. Whitworth, First Lieut. Thomas Mason, Capt. J. M. Moore, Second Lieut. D. P. Foley, Third Lieut. J. E. Reinburg, Chief Eng. A. H. Harrison, Asst. Eng. O. U. Turner, Capt. E. L. Deane, First Lieut. W. H. Roberts, Second Lieut. George Delap, Third Lieut. F. G. Dodge. Chief Eng. Eugene Vallat, Asst. Eng. Eugene Vallat, jr., Capt. J. A. Henriques, First Lieut. George H. Gooding, Second Lieut. F. G. F. Wadsworth, Third Lieut. L. L. Robinson, Chief Eng. G. C. Dereamer, Second Asst. Eng. A. J. Howison, First Lieut. Wm. J. Herring, Chief Eng. D. C. Chester, First Asst. Eng. S. H. Magee, Second Lieut. F. M. Dunwoody, Third Lieut. J. B. Hull, First Lieut. Robert Barstow, First Lieut. W. H. Hand, Third Lieut. J. L. Sill.

Second Asst. Eng. Willits Pedrick, First Asst. Eng. W. J. Phillips, Capt. L. M. Keene, First Lieut. S. E. Maguire, Second Lieut. F. H. Newcomb, Third Lieut. S. M. Landrey, Chief Eng. A. L. Churchill, First Asst. Eng. O. P. Remick, Second Asst. Eng. E. P. Webber, First Asst. Eng. F. B. Randall, Capt. Eric Gabrielsen, Chief Eng. J. J. Roberts, Capt. W. S. Simmons, Capt. J. C. Mitchell, Chief Eng. S. T. Taylor, Lieut. P. W. Thompson, First Asst. Eng. E. G. Schwartz, First Asst. Eng. C. F. Dyce, Chief Eng. M.D.L. Dinsmore, Capt. Frank Barr, Second Lieut. C. C. Fengar, First Lieut. G. E. McConnell, Second Asst. Eng. H. L. Boyd, First Lieut. J. M. Simms, Second Lieut. W. E. Reynolds, Third Lieut. B. L. Reed, Chief Eng. F. H. Pulsifer, Chief Eng. J. A. Severns, Second Asst. Eng. E. A. Jack.

First Lieut. T. D. Walker, Chief Eng. J. W. Collins, Capt. H. J. Blake, First Lieut. J. B. Butt, Second Lieut. A. Y. Lowe, Third Lieut. F. L. Smith, First Asst. Eng. J. B. Brown, Capt. A. A. Fengar, First Lieut S. A. Hall, Second Lieut. W. S. Howland, Third Lieut. E. P. Bertholf, Chief Eng. G. M. Robinson, Second Asst. Eng. Alex. Dennett, Second Asst. Eng. R. W. Champlain, Capt. J. G. Baker, Lieut. W. C. DeHart, Lieut. W. H. Cushing, Lieut. J. H. Brown, Chief Eng. C. H. Ball, Asst. Eng. D. T. Cross, Lieut. H. D. Smith, First Lieut. J. H. Rogers, First Lieut. J. Brann, Asst. Eng. J. Fitzpatrick, Third Lieut. R. O. Crisp, Second Lieut. J. H. Little, First Lieut. George E. Thurston, Second Lieut. R. M. Clark, Lieut. John Morrissey.

First Lieut. J. W. Howison, Second Lieut. S. Howard, Third Lieut. J. Quinan, Chief Eng. G. T. Tupper, Second Asst. Eng. W. G. Meyers, Second Asst. Eng. H. O. Slayton, First. Lieut. B. W. Loring, Second Lieut. C. H. McLellan, First Lieut. J. E. Thurston, Second Lieut. J. N. Rhoades, First Lieut. W. S. Baldwin, Third Lieut. J. M. Moore, Second Lieut. C. H. Foote, Second Lieut. H. Emery, Chief Eng. J. R. Dally, Second Asst. Eng. J. M. O'Donovan, Capt. David Evans, First Lieut. George Walden, Second Asst. Eng. William Robinson, Second Lieut. John Wyckoff, Chief Eng. M. T. Chevers, Third Lieut. P. H. Uberroth, First Lieut. A.D. Littlefield, Second Asst. Eng J. I. Brereton, Second Asst. Eng. J. H. Chalker, Third Lieut. C. B. Fengar, Capt. J. A. Slamm, Second Lieut. J. L. Davis, Asst. Eng. C. F. Nash, Lieut. J. C. Cantwell, Lieutenant Ainsworth.

ief Eng. Jeffries, Asst. Eng. McLellegan, Assistant Engineer Falkenstein, Lieut. A. E. Benham, Assistant Engineer Broadbent, First Asst. Eng. F. E. Owen, Capt. John McGowan, First Asst. Eng. H. C. Barrows, Capt. J. W. Congdon, First Lieut. F. J. Simmonds, Second Lieut. C. T. Brian, Third Lieut. J. C. Harris, Chief Eng. F. W. H. Whittaker, First Asst. Eng. C. F. Coffin, Second Asst. Eng. D. F. Bowen, First Lieut. W. F. Kilgore, First Asst. Eng. W. H. Warren, First Asst. Eng. D. McC. French, Second Asst. Eng. Phillip Littig, Capt. D. B. Hodgsdon, First Lieut. W. D. Roath, Lieut. O. D. Myrick, Lieut. K. W. Perry, Chief Eng. S. Keogh, Engineer Butler, Capt. R. Glover, Lieut. O. S. Willey, Lieut. H. M. Broadbent, Chief Eng. J. T. Wayson, Asst. Eng. M. G. Marsilliot.

Eng. H. C. Henshaw, Capt. L. G. Shepard, Lieut. Francis Tuttle, Lieut. J. C. Moore, Lieut. H. B. West, Lieut. F. H. Dimock, Eng. J. A. Doyle, Eng. W. F. Blakemore, Eng. J. B. Coyle, Capt. W. C. Coulson, Lieut. E. C. Chaytor, Lieut. G. A. Starkweather, Lieut. S. M. Crossley, Chief Eng. J. M. Case, Asst. Eng. C. W. Beckwith, Asst. Eng. H. W. Spear, Lieut. Oscar E. Hamlet, First Asst. Eng. James T. Kelcher, Second Lieut. J. F. Wild, Capt. M. A. Healy, First Lieut. Albert Buhner, Third Lieut. D. H. Jarvis, Lieut. A. J. Henderson, Chief Eng. Horace Hassel, Asst. Eng. Charles W. Monroe, Asst. Eng. Nath. E. Cutchin, First Lieut. W. A. Failing, Capt. C. M. Scammon, Asst. Eng. E. J. Noonan, Capt. Frederick Munger.

NEW YORK CITY, *November* 26, 1889.

Supplementary reasons to the petition to the honorable Secretary of the Treasury for the consolidation of the Revenue Marine with the regular Navy, under the proposed provisions of House Bill ——.

Having stated in the body of our petition such reasons as apply to the Revenue officers individually, we beg to call your attention to the following, in which are set forth those which affect the policy of the Government:

First.—Because the Naval Establishment should embrace and consist of all armed vessels of the Government which are officered by duly commissioned officers and manned by duly enlisted men.

Second.—Because the consolidation, in the manner provided and by the terms of this bill, would be strictly in accord with the character of its organization in 1790, the leading features of which were to bestow military rank upon the officers, and to place the vessels, armaments, and discipline upon the same footing as that in vogue in the regular Naval Establishment.

Third.—Because the Revenue Marine is essentially military in character—a fact recognized by its employment in all military operations in this country in times of war; its prescribed duties; the giving of military rank to its officers; the arming of its vessels, and the drill and discipline of the crews.

Fourth.—Because the manifest desire of the people that the Naval Establishment of the United States should be commensurate with the power and dignity of the nation, there is no apparent way in which this establishment can be increased with such little expense, and, at the same time, with such great advantage to the public service as by the proposed consolidation.

Fifth.—Because by the provisions of this bill the force now at the command of the Treasury Department for the protection of the revenue interest of this country would be greatly increased, while, at the same time, the control and authority now vested in the Hon. Secretary of the Treasury would in no wise be curtailed.

Sixth.—Because Congress, while conferring upon the officers of the Revenue Marine rank relative with the Navy, and while constantly treating the Revenue Marine as a part of the regular Naval Establishment of the country, have as constantly refused to the officers of this auxiliary corps the benefits appertaining to the regular Navy.

Seventh.—Because the consolidation of the Revenue Marine with the regular Naval Service would in no wise conflict with the principles of economical administration.

Eighth.—Because by the provisions of the proposed bill, Naval cadets now relegated to civil life from the Naval Academy, because of no vacancies in the Navy, would have their services accepted, and in consequence make some return to the Government for the expensive education bestowed upon them. At the same time the auxiliary Naval school for the instruction of Revenue Marine cadets would be abolished, thereby saving to the Government some $50,000 annually.

Ninth.—Because, by the consolidation of the Revenue Marine with the regular Navy, the Naval Establishment would be rendered more compact and strong, and in every way be able to perform more efficiently the duties now imposed upon each service individually. The value of this unity of action in the event of war would be inestimable.

Tenth.—Because it would give the young officers of the Navy, by virtue of the constant and active service, often hazardous in the extreme, that opportunity to acquire habits of command, readiness of resource, to become accustomed to responsibility and self-reliance while still active and adventurous.

Eleventh.—Because there would be established at once a practical school, in which young officers of the Navy would have afforded them excellent opportunities to learn the pilotage of our coast; boat duty under dangerous and difficult circumstances; handling vessels in crowded water; rescuing vessels ashore; getting lines to and towing vessels in heavy weather; taking care of and managing small vessels in gales along the coast; having, in fact, to perform various duties with small means and appliances; in this and many other ways preparing them for the high commands and responsibilities which await them.

Twelfth.—Because it will bring the officers of the whole naval service more often and more closely in contact with the business communities of the country and thus enable them to better appreciate and understand the needs of commerce and its requirements, of which they are the guardians.

Thirteenth.—Because, by virtue of the vessels, equipment, material, etc., of the Revenue Marine being put upon a footing compatible with modern naval requirements, by reason of this consolidation, the country would have in time of war a fleet of fast vessels, well armed, light in draught, highly efficient in speed, powerfully armed, and most eminently capable of performing the various duties of torpedo boat-catchers, dispatch vessels, scouts for the heavy fleets, keeping open lines of supplies, patrolling coast, rivers, and harbors, forming at all times one of the most powerful adjuncts to the country's naval force.

Fourteenth.—Because the consolidation with the Navy would relieve the Hon. Secretary of the Treasury of detail duties regarding the personnel and *matériel* of the service for which he has neither the time nor the technical knowledge to direct in person, and which in consequence demands a separate department for the management instead of coming under one individual naval head.

Fifteenth.—Because, there being at present no provision made for superannuated and disabled Revenue Marine officers, the active list is burdened by a large number of old and faithful servants of the people, who, instead of being retired, prevent the promotion of young and active men.

Sixteenth.—Because, while benefiting the interest of the public service, the consolidation would incidentally do justice to a body of public servants whose high standard of efficiency, devotion to duty, professional attainments, and personal character deserve, at least, a status of equality with brother officers in a contiguous service.

Seventeenth.—Because the consolidation in the manner provided for in the proposed bill while greatly adding to the strength of the Navy does not violently disturb existing institutions or methods and will produce no friction in present operations.

Finally, it has been considered possible that the proposed consolidation would cripple the Treasury Department in the execution of the laws now committed to the Revenue Marine for enforcement. A careful consideration of the provisions of the proposed measure will dispel this notion and prove its sophistry. A sufficient answer to this suggestion is plainly in the measure itself, but experience has demonstrated that officers of the Army and Navy have always rendered as efficient service while under the orders of civil departments as while serving under their own departments. Officers of the Army are constantly on duty in the Light-House service, which is a branch of the Treasury; so also are naval officers, from whose number are detailed the inspectors of districts, and who with our Army officers compose the Light-House Board, of which the Secretary of the Treasury is *ex-officio* president. Officers of the Navy and naval seamen perform the work of the Coast Survey under a bureau chief of the Civil Service, who is under the orders of the Secretary of the Treasury.

Your committee has been presented also with copies or originals of resolutions passed by the following bodies recommending the transfer of the Revenue Marine to the Navy, which indicates the opinion of those most interested in the conduct and welfare of the Revenue-Marine Service:

The Chamber of Commerce, Norfolk, Va.
The Board of Trade, Fernandina, Fla.
The Boston, Mass., Executive Business Association.
The Cotton Exchange, Savannah, Ga.
The Board of Trade, Wilmington, Del.
The Board of Trade, Brunswick, Ga.
The Board of Trade, Jacksonville, Fla.
Petition of the mayor, aldermen, councilmen, and business men of New Bedford, Mass.
The Board of Trade, Erie, Pa.
The Board of Trade, Boston, Mass.
The Chamber of Commerce, Rochester, New York,
The Cotton and Grain Exchange, New Berne, N. C.
The Board of Trade Chicago, Ill.
The Board of Trade, Portland, Me.
The Board of Trade, Charleston, S. C.
The Board of Trade, Bath, Me.
The Board of Trade, Baltimore, Md.
The Chamber of Commerce, Mobile, Ala.
The Chamber of Commerce, New Orleans.
The Board of Trade of Beaufort and Port Royal, S. C.
The Board of Trade, New Bedford, Mass.
The Vessel Owners and Captains' National Association of Boston, Mass.
The Chamber of Commerce, Boston, Mass.
The Board of Visitors to the Naval Academy.
The Board of Trade, Savannah, Ga.
The Merchants' Exchange, Buffalo, N. Y.
The Board of Trade, New London, Conn.

In conclusion your committee will say that the proposed transfer will result in a large saving to the Government, as will be seen by the following estimate (Appendix A), and they therefore believe that on every ground of efficiency and economy the bill should pass.

Rent of New York office .....
Commutation of quarters for superintendent
Traveling expenses and hotel bills for same
Reduction in salary of Chief of Revenue Ma
One assistant chief of division.....
Two clerks at $1,600 per annum.....
One clerk at $1,400 per annum.....
One clerk at $1,200 per annum.....
One clerk at $1,000 per annum.....
One clerk at $900 per annum.....
Reduction on account of repairs, one-fourth..
Commutation of quarters.....
Contingent expenses.....
Less an average of 15 graduates dismissed yea
vacancies in the Navy, educated at an aver
One year's pay to same on dismissal, $950....

Total annual saving first three years.....

Increase of expense by pay t

Rank.
Captain .....
First lieutenants .....
Second lieutenants .....
Third lieutenants .....
Chief engineers .....
First assistant engineers .....
Second assistant engineers .....
Total increase .....
Total saving first three years per annum .....
Net annual saving first three years .....

After three years—

By average of six graduates from Annapolis
made annually by the transfer at $10,000 ..
By one year's pay to same on dismissal, heret
Other items as above.....

Total saving after first three years per a
Total increase per annum .....

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 77.

GENERAL FRÉMONT.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SPINOLA, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 2849.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 2849) authorizing the President to appoint and retire John C. Frémont as a major-general in the United States Army, have examined the same and report:

The passage of this bill is recommended, as your committee believe the services of so distinguished a man as General Fremont deserve such a recognition at the hands of the country he has served with devotion, and to which he has added territory and renown. His advanced age (seventy-six), his loss of fortune, all commend this measure as one of kindness as well as merit. In making this recommendation your committee deem it unnecessary to attempt to bring within the limitation of a formal report achievements which have passed into history, and which entitle the old "Pathfinder" to a renown which is now beyond dispute, and to a gratitude of the people of this country which no one now questions.

The military services of John C. Frémont, as compiled from the records in the War Department, are briefly as follows:

Appointed into the U. S. Army by President Van Buren July 7, 1838, and as second lieutenant Topographical Engineers commenced the overland explorations. Received the brevet of captain U. S. Army July 31, "for gallant and highly meritorious services in two expeditions to the Rocky Mountains, the first of which terminated October 17, 1842; the second beyond those mountains terminated July 31, 1844" Was engaged on a third exploration and survey west of the Mississippi to July 23, 1846; was appointed lieutenant-colonel U. S. Mounted Rifles May 27, 1846; major commanding battalion of California volunteers and a provisional battalion organized by himself July 23, 1846; September 2, 1846, appointed military commandant of California; and on January 13, 1847, he concluded with the Mexicans articles of capitulation which terminated the war in California and left that country permanently in the possession of the United States.

Was appointed civil governor of the Territory January 16, 1847, to April 19, 1847, and resigned his commission as lieutenant-colonel March 15, 1848.

Was appointed major-general U. S. Army (regular) May 14, 1861; commanded the Western Department from July 25 to November 19, 1861; the Mountain Department to June 28, 1852; resigned June 4, 1864.

The name of General Frémont is identified forever with some of the proudest and most grateful passages in American history. His 20,000 miles of wilderness explorations in the midst of the inclemencies of nature and the ferocities of jealous and merciless tribes, his powers of endurance in a slender form, his intrepid coolness in the most appalling

ble resources.

The youngest of all is likely to beco
tune has linked his name with a scen
startling to the world as the announce
committed the magnificent task of ope
cific empire. His early association wit
years in the survey of the basin of the
ciation with that learned man in his fi
great map which unfolded to science t
gave him a thirst for adventure. He
distant and perilous expeditions which

Having received a lieutenant's comm
ical Engineers, he proposed to the Se
Rocky Mountains. His plan was appr
of men gathered on the Missouri fronti
South Pass; he achieved more than his
port was printed by the Senate, transl
the scientific world looked on Frémont
patient, however, for broader and more
new expedition. His first had carried
Mountains, and in November, 1843, he
the calm waters of the Pacific at his fe
to the world nine months traversing
snows, in which he explored and revea
California, the Sierra Nevada, the Valle
mento, and established the physical geo
the western part of our continent.

He was again in Washington in Augu
to the fame of the young explorer.

In 1845 he was again on his way to
comrades, to examine in detail the Paci
resulted in giving a volume of new scie
to the United States.

His achievements, military and civil
with Mexico in the occupation by our na
in its acquisition, was rewarded by the
came an independent

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 78.

GRADES OF OFFICE IN THE SUBSISTENCE DEPARTMENT OF THE ARMY.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Wheeler, of Alabama, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 28.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 28) to effect a re-arrangement of the grades of office in the Subsistence Department of the Army, having duly considered the same, submit the following report:

The object of this bill is to increase the efficiency of the Subsistence Department of the Army by giving it an organization in accord with the necessities of the service, and it proposes to effect this by the re-arrangement of grades without increasing the number of officers now in the department.

The following table will show the changes which the proposed bill will make and the additional cost to the Government:

	Present organization.	Proposed organization.	Increase.	Reduction.
Brigadier-general	1	1	.....	.....
Colonels	2	3	1	.....
Lieutenant-colonels	3	6	3	.....
Majors	8	8	.....	.....
Captains	12	8	.....	4
Total	26	26	4	4

Difference in cost.

Pay per year after twenty years' service:

1 colonel	$4,500
3 lieutenant-colonels	12,000
	16,500
4 captains	11,200
Difference per year	5,300

The urgent necessity of taking some action to improve the organization of this corps and remedy what seems to be a great hardship and injustice to officers in this branch of the service is so clearly set forth in the following communications from the Secretary of War, the Lieutenant-General of the Army, and the Commissary-General of Subsistence, that your committee make them a part of this report.

The action proposed is similar to that as
partment of which he is the head, and grant
trust that Congress will be pleased to consid
has) in view the promotion of men who, as th
by long and faithful service. Its object is,
placing of a department whose services are
whole Army in a state of proper efficiency.

In view of the statements made by the C
the approval of the Lieutenant-General comma
speedy consideration of the committee for thi

Very respectfully, your obedient servant

The PRESIDENT PRO TEMPORE UNITED ST

SIR: I forward herewith a draught of an "A
in the Subsistence Department of the Army."

The officers of the Subsistence Department
faulty organization of their corps, and the pro
by giving promotion to the intermediate grades.

The corps has not now a basis which gives it
as will be seen by reading the accompanying le
General, and this being the case, it is unneces
of men who have stood in one grade for so man
fit the service. I therefore commend the propo
spectfully ask its transmission to Congress in t
ment may be given an organization similar in s
of the Army.

Very respectfully, your obedient servant,

The SECRETARY OF WAR.

OFFICE COMMISSA

GENERAL: I have the honor to inclose herew
rearrangement of grades of office in the Subsist
it is proposed, with your approval

would be only temporary. Time has shown that this belief was erroneous. As well stated by the Adjutant-General, referring to the number of divisions and departments, in his letter of January last, submitting the draught of a bill, similar to this, for the reorganization of his department:

"The wisdom of the present territorial division of the country has been fully demonstrated by more than twenty years' experience, and leads to the conclusion that any departure from this system must be remote. In view of this, the underlying reason for the desired organization becomes apparent."

Besides the principal purchasing depots, involving great responsibility and requiring officers of rank and experience, there are three military divisions and six military departments, each of which requires an officer of the Subsistence Department as chief commissary. There are not in the department, as at present organized, enough officers above the rank of captain to fill these positions. As a consequence, four captains are performing duty as chief commissaries, while on the same staffs the representatives of other departments have higher rank, often to the extent of two grades.

With the re-arrangement of grades provided for in the proposed bill, the department, with the same number of officers as at present, would have a colonel for each military division and a lieutenant-colonel or major for each department and principal purchasing depot.

For the efficiency of an army a well-organized commissariat is second in importance to no other branch of army administration, and the duties of the officers of this department, whether at military headquarters or at large purchasing depots, demand ability, experience, and unremitting careful attention. As chief commissaries of divisions and departments, they must have thorough knowledge of the details and customs of service, of the wants and necessities of troops, of the resources of the country, and of the laws and regulations relative to the procurement and distribution of army supplies. Not only are they, equally with officers of the general staff, responsible to the commanding general for the efficient service of their department within his command, but they are also, as disbursing officers, pecuniarily responsible that their acts are in accordance with law and regulations. Their rank evidently should be commensurate to the importance of their duties, and not inferior to that held by officers of other staff departments performing duties of like responsibility.

The impropriety and injustice of requiring officers of one department to serve with so much less rank than that of others, whose duties are no more important, will be manifest to any one who has ever served as an officer. The hardship to officers of this department will be still more apparent when their length of service is considered in comparison with that of those of the same rank in other branches of the service. It comes directly from the defective grading of its officers, which has caused in the department an extreme and unparalleled stagnation of promotion. To show clearly the extent of this, a statement setting forth facts in detail is inclosed herewith, to which attention is specially invited.

I will merely add here that since 1865 only one officer besides myself has advanced more than one grade in the Subsistence Department, and that five of them are still serving in the same grade they held the year the war closed. Of the majors who would be promoted should the proposed bill become a law all have served continuously over thirty years, and of the captains who would be promoted all have served over twenty-five years, one of them in the same grade nearly twenty-six years. All officers now in the department, except the two junior captains, served in the Army during the war; one-half of them were officers in the Army before the war; and three-fourths of them are still serving in the grades of major and captain.

It is not too much to say that no officers in service have worked more intelligently, zealously, and faithfully than the officers of this department, although feeling keenly the fact that they were receiving less promotion than any other class of officers in the Army.

As the proposed measure will not increase the number of officers in the department, but will correct existing defects in its organization, do justice to most deserving men without injury or injustice to any one, and is in the line of improving the military service, I ask for it your favorable consideration and action.

I am, general, very respectfully, your obedient servant,

R. MACFEELY,
Commissary-General Subsistence.

Lieut. Gen. P. H. SHERIDAN,
Commanding the Army.

The present organization of the Subsistence Department is one brigadier-general, two colonels, three lieutenant-colonels, eight majors, and twelve captains. The bill provides for one brigadier-general, three colonels, six lieutenant-colonels, eight majors, and eight captains, the same total number of officers as are now in the department.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 79.

CONFERRING BREVET RANK ON OFFICERS OF THE ARMY FOR GALLANT SERVICES IN INDIAN CAMPAIGNS.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Cutcheon, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 478.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 478) to authorize the President to confer brevet rank on officers of the Army for gallant services in Indian campaigns, report:

That they have had the same under consideration, and report the same back, with the unanimous recommendation that the same pass with an amendment.

This bill in substantially its present form has been unanimously reported in the House in four successive Congresses. It has passed the House twice by unanimous vote, and has passed the Senate, in the form in which it is here reported, in the Fiftieth Congress; but owing to a difference in the wording of the bill in the two houses, it failed to become a law. It has never been reported adversely or failed to receive favorable action when reached. It does not take a dollar from the Treasury, now or hereafter. It confers no rank either now or hereafter. It is simply a recognition of gallant services performed long ago in arduous and trying Indian campaigns, and for which brevet recognitions were recommended by the proper department commanders at the time.

Many of the beneficiaries are long since dead from wounds received or disease contracted in the service.

It simply completes their military record without giving to them or their heirs any pecuniary emolument whatever, now or hereafter.

Many to whom it relates have since resigned. To them it is a tardy recognition of faithful and valiant service to the country, which costs us nothing but a sheet of parchment.

The committee recommend that House bill 478 be amended, so as to make it more explicit, by adding the following as sections 2, 3, and 4, and that as so amended it pass:

Sec. 2. That such brevet commissions as may be issued under the provisions of this act shall bear date from the date of the recommendation thereof by the department commander in each case respectively.

Sec. 3. That brevet rank shall be considered strictly honorary, and shall confer no privilege of precedence or command not already provided for in the statutes which embody the rules and articles governing the Army of the United States.

Sec. 4. That all laws and clauses of laws in conflict with this act are hereby repealed.

The committee, for further information of the House, appends some of the reports in former Congresses, also letters from the Adjutant-General and Secretary of War.

First indorsement on letter from Hon. B. M. C
mittee, inclosing H. R. 478, providing for br
paigns.

ADJUTANT-G

Respectfully returned to the Secretary of W
tions for brevets for service in Indian campai
1867, as shown by the records of this office.

A good many officers named in this list are n
many have been promoted so that they now hol
rank recommended.

Military men in authority regard gallant ser
meritorious as with a civilized enemy.

The endurance of fatigue, the danger to heal
effort, and the bravery displayed in the actual e
the scene of action may be smaller in one case th

Hence gallantry is just as much entitled to the
ment in one case as the other.

I regard the provisions of the accompanying bi
of gallant services rendered, and as a most imp
There can be no kind of military heroism that sh
nating Government in order to secure the best eff

[House Report No. 1225, Fiftieth Con

The Committee on Military Affairs, to whom
authorize the President to confer brevet rank on
vices in Indian campaigns, respectfully report:

This measure, in almost the same identical ter
the Forty-seventh, Forty-eighth, and Forty-ninth

In the latter it passed the House unanimously,
Senate, but was not reached on the Calendar. Th
from this committee in the Forty-ninth Congress

"The existing law relating to brevet rank is co
Revised Statutes (taken from section 2 of the act
the President, 'by and with the advice and cons
war, confer commissions by brevet * * * fo
services in presence of the enemy,' etc.

"This law has been construed by the War Depa
as authorizing the conferring of brevet commiss
meritorious services in engagements with or
made during the

"No further nominations have been made, save in one instance, that of Lieut. E. S. Farrow, Twenty-first Infantry, made in April, 1880, and not confirmed.

"In 1878 the President requested the views of the Secretary of War as to the propriety of again submitting to the Senate nominations for brevets for service in Indian campaigns.

"The Secretary referred the question to the General of the Army (General Sherman) for his views, and in response the general remarked:

"'If brevet commissions are right, and should be conferred for any wars whatever, they should be for Indian wars, because these wars call for the largest measure of risk, exposure, and toil, and every possible stimulus of honor and profit should be held out to encourage officers to struggle for success.'

"We fully concur in this expression of the General of the Army. We can conceive of no reason that would be valid in any war that would not be equally valid for granting brevets in Indian wars.

"There is rather more reason for it than less. In other campaigns there is a certain glory or distinction to be won, and an opportunity for promotion and reward, which, owing to the limited theater of operations, and the peculiar nature of wars against savages, does not and can not exist in these campaigns. And yet every highest attribute of a good soldier and officer is called for in these wars. Courage, skill, vigilance, endurance, wisdom, judgment, and unflagging energy, while usually remote from and beyond communication with officers of high rank, are all demanded in these disagreeable and thankless campaigns to protect our remote frontier.

"It is true that under existing laws the brevet commission carries with it no rank or pay or command, except in the single instance of assignment to duty by the President on the brevet commission, when officers are 'actually engaged in hostilities' (act March 3, 1883).

"With that exception they confer a mere title. It may be no more than a ribbon or a cross, or other decoration, but it is a visible symbol of the appreciation of a commanding general and of the recognition of the nation through its Chief Magistrate and Senate.

"Believing that there is some just doubt about the construction and meaning of the present law, and that such recognition would be only justice to some exceedingly meritorious officers, your committee recommend that the bill be amended for greater certainty by striking out in line 8 the words 'commanding general,' and inserting in lieu thereof the words 'department commander,' and that as so amended the bill do pass."

The committee recommend that the bill do pass.

[Senate Report No. 790, Fiftieth Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 1323) entitled "A bill to confer brevet promotions on officers of the United States Army particularly distinguished by heroic action in Indian warfare, and for other purposes," have had the same under consideration, in connection with two other bills (S. 2021 and 2028) on the same subject, and herewith report back the bill S. 1323, amended, and recommend its passage.

By section 1209 of the Revised Statutes (act approved March 1, 1869) it is provided that the President, "by and with the advice and consent of the Senate, may, *in time of war*, confer commissions by brevet * * * for distinguished conduct and public services in presence of the enemy," etc.

The Senate has refused to construe this provision as authorizing brevet rank to be conferred on officers who for "distinguished conduct and public services" in Indian wars would seem to be justly entitled to receive the benefits (honorary) of the law of 1869. The War Department and the Attorney-General have held that officers in Indian wars could be brevetted during *the existence* of Indian hostilities, and the reason assigned by the Senate for refusal to confirm has been that the Indian was not an "enemy," and that a conflict with Indians could not be termed "a time of war." Assuming this construction of the act of 1869 to be sound, your committee are of the opinion that the construction measures the extent of the reason why it should be extended to include officers who have distinguished themselves as aforesaid in Indian campaigns. In 1869 a number of brevets for services in Indian wars were submitted to the Senate, some of which were confirmed; but there have been no confirmations of this charater since.

In 1874 and in 1875 nominations for brevet appointments, based on services rendered in the Modoc and Arizona Indian campaigns, were submitted to the Senate, but were not confirmed.

held out to encourage officers to struggle for

A favorable report was made on this subje
gress, at which time the committee was in r
officers of all grades urging that this brevet
uments, numerously signed by officers, contai

"The measure, as reported, authorizes th
consent of the Senate, to appoint to brevet
have been recommended to this distinction fo
tile Indians since January 1, 1867. The ran
carrying no additional pay; the aim is sim
In any other country the gallant exploits of t
would have been acknowledged not only by a
pay.

"During the war for the Union brevet rank
guished general officer once said, brevet commi
if any, inasmuch as they call for the largest me
every possible stimulus of honor and profit sho
struggle for success. In war with civilized nat
make a name that will be remembered in hist
Indian operations prevents them from attractin
ing permanent distinction to the participants.
in these small operations as in larger ones. Th
and good judgment required are also as great in
the terrible consciousness that capture often mea
ish atrocities that savagery can invent. Even
taken away, there is no more reason for deprivi
displayed in the lonely cañons of the Sierra Mad
defenses of Petersburgh.

"There is still another reason why the pending
now exists a statute which authorizes the conf
sioned officers 'for distinguished conduct and pu
Why, then, is not this sufficient? Simply beca
in past years successfully called in question wh
an 'enemy' in the sense meant by the statute
twenty years, in the matter of interpretation,
officers nominated for brevets on account of splo
is the case, and in one instance of adverse act
Military Committee expressly said that it had n
of the services rendered. Thus a score or more
reward they would otherwise have received, a
dead."

These views accord with those expressed by
this subject in the last Congress:

"In other campaigns there is a certain glory o
tunity for promotion and reward, which, owing
and the peculiar

out reference to the kind of foe engaged. You are well aware of the onerous and dangerous nature of this Indian service, and as brevets is all that is asked, I hope they will not be withheld longer from the persons who so richly deserve them.

Yours, sincerely,

GEORGE CROOK.

To CHARLES F. MANDERSON.

Capt. E. A. Snow gives quite a graphic account of the heroism and valor displayed by men upon whom it is proposed to confer this brevet rank. He says:

WASHINGTON, D. C., *January* 19, 1888.

DEAR SIR: I have the honor to very respectfully submit to you the following, which are but a few from among many of the instances of personal valor on the battle-field that have come to my notice in Indian warfare:

Captain Bourke distinguished himself on the field so frequently in the Apache campaigns from 1870 to 1873 as to be four times mentioned in general orders for his gallant and heroic conduct, and in other campaigns has frequently been the recipient of honorable and praiseworthy mention for his valor and services in the field, and he has been several times recommended for brevet promotion; but under existing laws being unable to confer this recognition for valor the officers ceased to ask for it, or there would be a larger number of instances which I could refer to.

To omit many instances, I will observe that he distinguished himself by leading a charge, on the 17th of March, 1876, on Powder River, and in several charges on the Rosebud on the 17th of June, 1876, in an engagement with the same Indians who massacred General Custer's command, and eight days before that fight. In this engagement at the Rosebud Captain Bourke saved my life after I was shot in the right elbow and left wrist joints, causing total disability. He rode into the very midst of the Indians and rescued me, although the nearest skirmish line was at least a thousand yards away. I could give other instances, but it would make this letter too long.

Major Henry, of the Tenth Cavalry, distinguished himself in this engagement, and so did Major Mills, of the Ninth Cavalry; and Major Mills whipped the Indians and won the first victory after the Custer massacre, and it was one of the most brilliant ones of the campaign. Colonel Hatch, of the Ninth Cavalry, distinguished at a more recent date, and many others. But it will occur that from the frequent and constant Indian warfare the instances of valor are numerous, and your bill will enable the President and Senate to recognize it by a nominal promotion.

I have the honor to remain, sir, very respectfully, your obedient servant,

E. A. SNOW.

Hon. CHARLES F. MANDERSON,
United States Senator for Nebraska.

After full consideration of the subject-matter your committee have struck out the preamble of the bill (S. 1323), and have amended the title and the bill so as to allow brevet rank to be conferred on "all officers of the Army now on the active or retired lists who, by their department commander and with the concurrence of the Commanding General of the Army, have been or may be recommended for gallant service in action against hostile Indians since January 1, 1867," the brevet commissions to bear date only from the passage of this act; the date of the heroic action for which the brevet rank is conferred to appear in the commission; such rank to be only honorary, without privilege of precedence or command not already provided for by the statutes which embody the rules and articles governing the Army.

As amended, the measure has the approval of Lieutenant-General Sheridan, under date of March 29, 1888.

Your committee accordingly report the bill (S. 1323) back favorably, amended as heretofore stated, and recommend its passage.

[Senate Report No. 1943, Forty-ninth Congress, second session.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6758) "to authorize the President to confer brevet rank on officers of the Army for gallant services in Indian campaigns," report back the bill favorably.

The committee have received numerous letters from Army officers of all grades, urging that there should be this recognition of the gallant and arduous services frequently incident to campaigns against hostile Indians. Among other letters so re-

Among other matter received by the commit
number of military officers interested in the su
of such value that the committee adopted it as

INDIAN SERVICE BRE

In the rival rush of measures calling for millio
proposes to do a great act of justice, and there
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very little chance of receiving attention, but per
the consideration of military bills it may be bro

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of the services rendered. Thus a score or more of
reward they would otherwise have

Your committee quite agree with the Committee on Military Affairs of the House of Representatives, and adopt their report, as follows:

The existing law relating to brevet rank is contained in sections 1209 and 1210, Revised Statutes (taken from section 2 of the act of March 1, 1869), and provides that the President, "by and with the advice and consent of the Senate, may, *in time of war*, confer commissions by brevet * * * for distinguished conduct and public services in presence of the enemy," etc.

This law has been construed by the War Department and by the Attorney-General as authorizing the conferring of brevet commissions upon officers of the Army for meritorious services in engagements with or campaigns against hostile Indians, *if made during the existence of Indian hostilities.*

The War Department formerly acted upon this construction of the law, and in 1869 submitted a number of brevets for services in Indian campaigns, some of which were confirmed by the Senate. No brevet nominations have, however, been confirmed by the Senate since 1869.

In 1874 and in 1875 nominations for brevet appointments, based on services rendered in the Modoc and Arizona Indian campaigns, were submitted to the Senate, but were not confirmed.

In January, 1876, all these nominations were resubmitted, but the Senate again adjourned without action.

No further nominations have been made, save in one instance, that of Lieut. E. S. Farrow, Twenty-first Infantry, made in April, 1880, and not confirmed.

In 1878 the President requested the views of the Secretary of War as to the propriety of again submitting to the Senate nominations for brevets for service in Indian campaigns.

The Secretary referred the question to the General of the Army (General Sherman) for his views, and in response the General remarked:

"If brevet commissions are right, and should be conferred for any wars whatever, they should be for Indian wars, because these wars call for the largest measures of risk, exposure, and toil, and every possible stimulus of honor and profit should be held out to encourage officers to struggle for success."

We fully concur in this expression of the General of the Army. We can conceive of no reason that would be valid in any war that would not be equally valid for granting brevets in Indian wars.

There is rather more reason for it than less. In other campaigns there is a certain glory or distinction to be won, and an opportunity for promotion and reward, which, owing to the limited theater of operations, and the peculiar nature of wars against savages, does not and can not exist in these campaigns. And yet every highest attribute of a good soldier and officer is called for in these wars. Courage, skill, vigilance, endurance, wisdom, judgment, and unflagging energy, while usually remote from and beyond communication with officers of high rank, are all demanded in these disagreeable and thankless campaigns to protect our remote frontiers.

It is true that under existing laws the brevet commission carries with it no rank or pay or command, except in the single instance of assignment to duty by the President on the brevet commission when officers are "actually engaged in hostilities" (act March 3, 1883.)

With that exception they confer a mere title. It may be no more than a mere ribbon, or a cross, or other decoration, but it is a visible symbol of the appreciation of a commanding general and of the recognition of the nation through its Chief Magistrate and Senate.

Believing that there is some just doubt about the construction and meaning of the present law, and that such recognition would be only justice to some exceedingly meritorious officers, your committee recommend that the bill be amended for greater certainty by striking out in line 8 the words "commanding general," and inserting in lieu thereof the words "department commander," and that as so amended the bill do pass.

The committee, therefore, recommend the passage of the bill without amendment.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 80.

CROW INDIAN RESERVATION.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Gifford, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 526.]

The Crow Indian Reservation in Montana embraces an area of about 6,000,000 acres.

That upon this vast tract of land, about 2,500 Indians are located, according to the best testimony we have been able to procure, including the statement of Colonel Howard, who has spent considerable time in surveying lands on the reservation and making allotments to the Indians in severalty. The tribe is located entirely east of the divide between the Clarke's Fork River and Pryors Creek. These streams run nearly parallel from the south into the Yellowstone River. West of this divide the approximate area is about 670,000 acres. Within that area no lands have been allotted to Indians, nor are the Indians now settled upon, or in the habit of camping upon, or traveling over any portion of this ground.

That heretofore allotments have been made to the Crow Indians to the extent of 234,080 acres, and the acreage yet to be allotted will aggregate about 500,000 acres. All these allotments have been made east of the divide between Clarke's Fork River and Pryors Creek, and east of that divide there will still remain over three and a half million acres of land after all allotments shall have been made to all the Indians in the tribe. It is therefore evident to your committee that the Indians have no use whatever for the unoccupied portion of the reservation lying west of the divide, between Pryors Creek and Clarke's Fork.

That portion of the reservation thus unoccupied is composed of rich valley lands, well watered and suited for agriculture, together with certain mountainous portions, in which minerals have been discovered and developed to a considerable extent by prospectors. It is known that in the easterly part of said strip, along the banks of Clarke's Fork River, there are splendid deposits of bituminous coal, while on the westerly edge of the reservation the deposit of copper, gold, lead, and silver ores is known to be extensive. The Northern Pacific Railroad extends along and to some extent through this westerly portion of the reservation along the Yellowstone River, and prosperous settlements have grown up along the line of that road. The same is true as to the westerly end of the reservation, while on the south of this westerly portion of the reservation the mining camp of Cooke City has been developed to a very considerable extent and with great promise of future prosperity.

There is likewise developed just south of this strip west of the divide

ment and not subject to settlement
the Crow Reservation is a positive detri
while of no value whatever to the Crow I

Your committee therefore recommends
opening of negotiations with the Crow In
of the westerly portion of the said reserv
passed, with an amendment fixing the s
Pryors Creek and Clarke's Fork River as
Reservation, and that the Secretary of t
appoint three commissioners instead of
stricken out of line 5 of said bill and "thr

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 81.

SISSETON AND WAHPETON BANDS OF SIOUX INDIANS.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Gifford, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3732.]

The Committee on Indian Affairs submits the following report on House bill 8561, to accept and ratify an agreement made by the Sisseton and Wahpeton bands of Sioux Indians, and to grant a right of way for the Chicago, Milwaukee and St. Paul Railway through the Lake Traverse Reservation in Dakota:

Your Committee on Indian Affairs has had its attention called to the matter of ratifying an agreement entered into between the Chicago, Milwaukee and St. Paul Railway Company, of the one part, and the Sisseton and Wahpeton bands of Sioux Indians, of the other part, in 1880.

These bands of Indians occupy a small reservation in Dakota bordering upon Lake Traverse and extending southwestward from said lake.

From the reports upon this subject made by the Secretary of the Interior and the Commissioner of Indian Affairs, dated December 12 and 17, respectively, 1885, it appears that the aggregate sum of $2,402.13 has been paid by the railway company in pursuance of this agreement, and that the sum of $266.11 remains unpaid under the agreement. The bill herewith presented is prepared with care and amply protects the interests of the Indians.

The President especially calls the attention of the committee to this matter. It appears that this money is now lying idle and is much needed by the Indians to purchase seed, grain, and other things necessary to secure a crop the coming season.

These Indians are among the most advanced of those in the United States.

The railway has long since been constructed, and it is not improper to state that it is a matter of injustice and hardship to the Indians to retain this money longer.

Your committee recommend the passage of the bill herewith presented.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 82.

INDIANS AT FORT BERTHOLD AGENCY, IN NORTH DAKOTA.

February 15, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Gifford, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 664.]

The Committee on Indian Affairs submit the following report on House bill 664, to ratify and confirm an agreement with the Indians in Fort Berthold Agency, in North Dakota.

These Indians at one time occupied a large tract of country, amounting to some 10,000,000 or more acres, lying chiefly to the south and west of the present agency. This country has been encroached upon by the whites and reduced to its present area of about 3,000,000 acres of Indian country.

These Indians have always been friendly with the whites and have been quite susceptible to civilization. They are now in quite an advanced state of improvement and fully ready and anxious to take their lands in severalty. There is no question regarding their being fully qualified for that purpose; and your committee believe it is greatly to their benefit and advantage that said agreement be at once ratified. This will place means within their reach with which to build up and improve homes.

It does not appear that these Indians have ever received any direct compensation for the lands taken from them and opened to settlement, though annual appropriations have been made by the Government of from $30,000 to $60,000 towards their support, but not in accordance with any treaty stipulations. The Indians upon this reservation number about 1,325 souls.

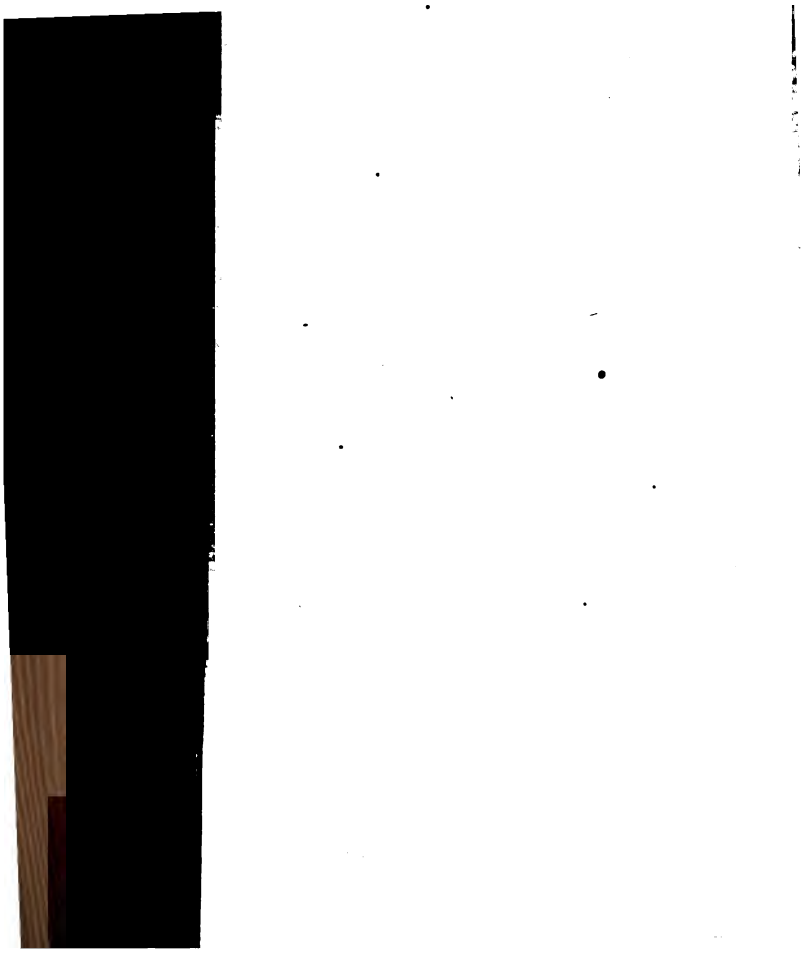
There is ceded under this agreement about 1,600,000 acres, and the Indians about 1,300,000, which includes the choicest lands upon the reservation and is ample in amount for their future use.

Your committee further state that under this agreement the Indians receive as compensation for the lands ceded $800,000, to be paid by eight equal annual installments, besides a sum for the survey of the allotments of said Indians.

Your committee, for information, include the following communication in reference to this matter, which was received by the House in Ex. Doc. No. 107, first session Fiftieth Congress:

Treasury Department, *January* 19, 1888.

Sir: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of the Interior of the 14th instant, and its accompanying papers, in relation to the importance of a speedy ratification of the agreement entered into by and between the commissioners appointed under the act



51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 82.

INDIANS AT FORT BERTHOLD AGENCY, IN NORTH DAKOTA.

February 15, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Gifford, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 664.]

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These Indians at one time occupied a large tract of country, amounting to some 10,000,000 or more acres, lying chiefly to the south and west of the present agency. This country has been encroached upon by the whites and reduced to its present area of about 3,000,000 acres of Indian country.

These Indians have always been friendly with the whites and have been quite susceptible to civilization. They are now in quite an advanced state of improvement and fully ready and anxious to take their lands in severalty. There is no question regarding their being fully qualified for that purpose; and your committee believe it is greatly to their benefit and advantage that said agreement be at once ratified. This will place means within their reach with which to build up and improve homes.

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Your committee, for information, include the following communication in reference to this matter, which was received by the House in Ex. Doc. No. 107, first session Fiftieth Congress:

Treasury Department, *January* 19, 1888.

Sir: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of the Interior of the 14th instant, and its accompanying papers, in relation to the importance of a speedy ratification of the agreement entered into by and between the commissioners appointed under the act

of May 15, 1886 (24 Stat., p. 44), and the Arickaree, Gros Ventre, and Mandan tribes of Indians, and submitting an item for insertion in the Indian appropriation bill ratifying and confirming the agreement and making the necessary provision for carrying the same into effect.

Respectfully, yours,

C. S. FAIRCHILD,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
Washington, January 14, 1888.

SIR: In pursuance of the provision of section 2 of the act of July 7, 1884 (23 Stat., 254), I have the honor to inclose herewith for transmittal to Congress copy of a letter of 13th instant from the Commissioner of Indian Affairs, presenting copy of a communication received from United States Indian Agent Gifford, of the Fort Berthold Agency, Dak., urging the importance of the speedy ratification of the agreement entered into on the 14th day of December, 1886, between the Northwest Commission and the Indians upon the Fort Berthold Reservation, in said Territory, which agreement was transmitted to Congress by the President January 17, 1887, as will be seen from Senate Ex. Doc. No. 30, Forty-ninth Congress, second session, inclosed herewith.

The Commissioner of Indian Affairs recommends, in order to insure action during the present session of Congress, that a clause in form as presented herewith, in the sum of $87,500, be inserted in the Indian appropriation bill, as was done in the case of the Moses agreement (23 Stat., p. 79), ratifying and confirming the agreement now under consideration and making the necessary provision for carrying the same into effect.

The amount of the item is for first instal ment of $80,000 for the cession of land made by the Indians aggregating 1,600,000 acres, and also for the sum of $7,500 for necessary survey of land for allotments to Indians upon the diminished reservation.

The ratification of the agreement referred to was favorably recommended by this Department, as will be seen by executive document above indicated, and the matter, as now presented, has the approval of this Department.

I have the honor to be, very respectfully,

H. L. MULDROW,
Acting Secretary.

The SECRETARY OF THE TREASURY.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, January 13, 1888.

SIR: I have the honor to transmit herewith duplicate copies of a communication, dated December 12, 1887, from United States Indian Agent Abraham J. Gifford, of the Fort Berthold Agency, Dakota Territory, urging the importance of the speedy ratification of the agreement entered into on the 14th day of December, 1886, by and between the commissioners appointed under the act of Congress approved May 15, 1886, to negotiate with certain Indian tribes in Minnesota and the Northwest Territories (21 Stat., p. 44), and the Arickaree, Gros Ventre, and Mandan tribes, occupying the Fort Berthold Reservation, said Territory.

The agreement referred to was transmitted to Congress by the President January 17, 1887, and forms the subject-matter of Senate Ex. Doc. No. 30, Forty-ninth Congress, second session.

Presumably through lack of time no final action was taken thereon by the last Congress.

Agent Gifford states that the Indians are looking for the ratification of the agreement with great anxiety and no little impatience, and that he finds it difficult to satisfy them with any explanation as to the cause of the delay. He says they are ready to take their lands in severalty as provided in the agreement, and that it would be an act of great injustice to them to compel them to await the slower process of the general allotment act to obtain the much-needed means to establish themselves in individual homes through the sale of their surplus lands.

The acceptance of the provisions of the agreement was, he observes, the unanimous act of the three tribes, and

"It seems to them [he continues] the dawning of a new era, when they would shake off the yoke of pauperism which, as creatures of circumstance, they have been com-

pelled to wear for so long a time, and become a civilized and useful people. To accomplish this greatly-desired end they were willing to relinquish fully two-thirds of their lands which they, their fathers, and their father's fathers have occupied so long—and for what? Not that they might receive and enjoy personally the coveted money, but that they might enjoy together the provisions of the agreement, all tending to lift them from the depths of their present degradation to a higher sphere of life."

And again he says:

"If it is expected that the reformation which has taken place among these Indians during the past three years is to continue to success, and that the labor already spent in their behalf is to be a lasting one, then I am sure no greater drawback could present itself than to have Congress adjourn its present session without ratifying this agreement."

I concur in the opinion of Agent Gifford that the agreement ought to be ratified with as little delay as possible.

In keeping with the policy of the Government, it provides for the allotment of lands in severalty to the Indians in quantity, and with a similar restriction regarding alienation, as is provided in the severalty act, except that it does not authorize the President to extend the non-alienation period beyond the twenty-five years specified.

In all human probability it would be several years (two or three at least) before the Indians would derive any financial aid from the sale of their surplus lands if the general allotment act were applied in their case, but under the terms of the late agreement the money consideration would be forthcoming at once, and could be expended in assisting them in beginning life on their individual allotments.

This is a very important consideration, especially as the Indians are ripe for the application of the allotment plan, and are impatient to select their lands in accordance with the agreement, and go to work.

Furthermore, by the terms of this agreement a tract of land estimated to contain 1,600,000 acres is made available to white settlement. This also is an important consideration.

As I remarked in my letter of January 8, 1887, forwarding the agreement for transmittal to Congress, I regard the agreement as exceedingly favorable alike to the Government and the Indians, as, if faithfully carried out, it will enable the Indians to become self-supporting, and to be entirely independent of the Government at the expiration of the ten years for which the annual installments are to run.

In order to insure action during the present session of Congress, I have the honor to recommend that a clause be inserted in the Indian appropriation bill, as was done in the case of the Moses agreement (23 Stat., p. 79), ratifying and confirming the agreement now under consideration, and making necessary provision for carrying the same into effect.

As the provisions of the severalty act are being extended to other tribes and bands throughout the country, none of whom can be said to be better prepared or more anxious to accept the new order of things, it would be manifestly unjust to delay action upon the pending agreement with the Fort Berthold Indians; for until the agreement is disposed of, one way or another, no steps can be taken to give them the benefit of the severalty act.

I have prepared and herewith transmit a draught of an item in furtherance of the recommendation herein made.

As there is no provision in the agreement for subdividing the diminished reservation for allotment, the cost of the surveys will have to be borne by the Government; but this is a very small matter, considering the mutual benefits to be derived from the vast cession of lands made to the Government. The item to be inserted in the bill makes provision for the required surveys.

As the agreement is printed in convenient form, for reference, in Senate Ex. Doc. No. 30, Forty-ninth Congress, second session, I inclose herewith two copies thereof, in lieu of written copies which otherwise I should have had prepared in this office.

I have the honor to recommend that copies of this report and accompanying papers be transmitted to the Senate and House of Representatives, with request that the item ratifying and confirming said agreement and making the needed appropriation of money, be substituted for my estimate of funds required for the subsistence and civilization of the Arickarees, Gros Ventres, and Mandans for the fiscal year ending June 30, 1889.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

SIR: I desire to call your attention partic
seems to me the absolute necessity, of the ratif
the agreement entered into by the Northwes
agency on the 14th of December, twelve mon
ing before Congress. Knowing as well as I d
Indians in regard to this agreement, which h
tion and thought for the past three years, I fe
importance of such a step to the Indians as a d
not fail to accomplish all that can be desired d
they have never had before, an opportunity to
independent and self-sustaining people. The
agreement was by no means that of a few, but i
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their fathers, and their fathers' fathers have oc
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depths of their present degradation to a higher

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Indians have been hoping for, and there can be
I regard the provisions of the agreement far m
particular Indians, who are now fully prepared
of the agreement, and are ready and waiting;
attempt almost daily to explain to them the del
they are ready, it seems an act of injustice to th
process of the allotment act, while the agreement
benefits. Besides containing all the important
agreement goes still further, and provides at on
ment act provides after *all* have received allotm
vations. The amount of money annually appr
dians ($35,000) will not be sufficient for them to
provisions of the general allotment act, while o
vides at once for such assistance as is necessa
allotments, furnishing them such articles as ar
and effectually on the way to self-maintenance
nual installment, as provided in Article II of the
that they will be so far advanced in civilized pu
and entirely independent of assistance from the

In view of all the circumstances attending th
imagine no greater calamity

minds a breach of faith. If it is expected that the reformation which has taken place among these Indians during the past three years is to continue to success, and that the labor already spent in their behalf is to be a lasting one, then I am sure no greater drawback could present itself than to have Congress adjourn its present session without ratifying this agreement. I trust, with these facts in view, that you too will see the necessity of taking such steps in the matter as will lead to the accomplishment of this end.

Very respectfully, your obedient servant,

ABRAM J. GIFFORD,
U. S. Indian Agent.

Hon. J. D. C. ATKINS,
Commissioner of Indian Affairs, Washington.

[Senate Ex. Doc. No. 30, Forty-ninth Congress, second session.]

Message from the President of the United States, transmitting a communication from the Secretary of the Interior relative to the Indians at Fort Berthold Reservation.

To the Senate and House of Representatives:

I transmit herewith a communication of 11th instant from the Secretary of the Interior, submitting, with accompanying papers, a copy of an agreement duly made under the provisions of the act of May 15, 1886 (24 Stat., p. 44), with the Indians residing upon the Fort Berthold Reservation, in Dakota, for the cession of a portion of their reservation in said Territory, and for other purposes.

The agreement, together with the recommendations of the Department, is presented for the action of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION, *January* 17, 1887.

DEPARTMENT OF THE INTERIOR,
Washington, January 11, 1887.

I have the honor to submit herewith a copy of an agreement entered into at the Fort Berthold Indian Agency, in Dakota, under date of 14th December, 1886, with the Arickaree, Gros Ventre, and Mandan Indians residing upon the Fort Berthold Reservation, in said Territory, by the commissioners on behalf of the Government of the United States, duly appointed under the provisions of the act of May 15, 1886, to negotiate with certain Indian tribes in Minnesota and the Northwest Territories (24 Stats., 44). A copy of the letter of the commissioners, transmitting the said agreement to the Commissioner of Indian Affairs, and of the letter of the Commissioner of Indian Affairs forwarding the papers to the Department, are also submitted.

By the terms of the agreement the Indians in question cede to the United States over 1,600,000 acres of their reservation for the sum of $800,000, payable in ten yearly installments of $80,000 each, which sum is to be expended in the civilization and education of the Indians, and in establishing them in comfortable homes as an agricultural people. It also provides for the survey of their diminished reserve, and for the allotment of lands in severalty, and for the issue of patent therefor, with restrictions as to alienation.

In forwarding the papers to this Department, the Commissioner of Indian Affairs reviews at some length the provisions of the agreement, which he regards as exceedingly favorable to the Government, as well as to the Indians, though he expresses the opinion that it would have been much better if it had provided for the sale of the unallotted residue of the diminished reservation after the expiration of the twenty-five years, instead of its conveyance by patent to the tribe in common. He thinks the agreement should be ratified without delay, and he adds:

"As the time is short in which to secure the passage of a separate bill during the present session, the insertion of a clause in the Indian appropriation bill now before the Senate (similar to that ratifying the 'Moses agreement' contained in the act of July 4, 1884, 23 Stat., 79), in lieu of the provision for the subsistence and civilization of Arickarees, Gros Ventres, and Mandans, as contained in the bill passed by the House of Representatives, is believed to be the most feasible method of accomplishing that result."

For this purpose he has caused to be prepared an item (copy herewith) which he recommends may be incorporated in the said bill in lieu of the provision relating to said Indians.

For the first of ten installments for the
ment entered into at the Fort Berthold Ag
1886, between the Commissioners appointe
15, 1886, to negotiate with certain Indian t
ritories, and the Arickaree, Gros Ventre,
the Fort Berthold Reservation in Dakota,
fied, and confirmed, $80,000.

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SIR: I have the honor to transmit herew
tered into on the 14th day of December, 18
pointed under the act of Congress approve
Indian tribes in Minnesota and the North
Arickaree, Gros Ventre, and Mandan tribes
Reservation in Dakota, and of the report of
forwarding said agreement.

By the terms of the agreement the said I
States nearly two-thirds of their reservation
of the forty-eighth parallel of north latitud
south 6 miles west from the most westerly po

The compensation agreed upon is the sum
period of ten years, which sum is to be expe
the Indians, and in establishing them in com

It is further agreed that the Secretary of th
within the diminished reservation, or such
be surveyed, and, through the agent or such
the same in severalty to the Indians in quan
160 acres; to each single person over eight
under eighteen years of age, 80 acres, and to
of age, 40 acres.

Upon the approval of the allotments paten
allottee, which patents are to be of the legal
does and will hold the land thus allotted for
and at the expiration of said period will con
of the trust and free of all charge or incumb

Upon the completion of the allotments a
every member of the tribes to whom allotme
efit of, and be subject to, the laws of the Ter
alty for which is death or imprisonment in t

The Territory is prohibited

agency buildings and property to a more suitable locality, if, in the opinion of the Secretary of the Interior, such removal is desirable.

The out boundaries of the diminished reserve are to be surveyed and marked in a plain and substantial manner, the cost thereof to be paid out of the first annual installment.

The balance of said installment, and each subsequent annual installment, is to be expended in the purchase of goods, provisions, implements, in the education of the children, procuring medicine and medical attendance, in the care and support of the aged, sick, and infirm, and helpless orphans, and to promote their civilization, comfort, and improvement.

It is also provided that each family and each male Indian over eighteen years of age, when he shall in good faith commence the cultivation of his individual allotment, shall be assisted in the erection of a comfortable house, and provided with certain utensils, stock, and implements.

Whenever, in the opinion of the President, the annual installment of $80,000 shall be in excess of the amount required to be expended in any one year, the excess may be placed in the Treasury, to the credit of the Indians, to be expended in continuing the benefits when the annual installments shall have expired.

It is further provided that thereafter no subsistence shall be furnished any adult male Indian (the aged, sick, and infirm excepted) who does not endeavor by honest labor to support himself, nor to children between the ages of eight and fifteen years (the sick and infirm excepted), unless such children shall regularly attend school.

On the 17th of September, 1851, a treaty was concluded at Fort Laramie with certain Indian tribes (see Compilation of Laws) relating to Indian Affairs, page 317), including the Arickarees, Gros Ventres, and Mandans, in which a large tract of land was defined as the territory of these Indians.

This treaty was ratified by the Senate, with an amendment which was not agreed to by certain of the tribes, parties thereto, and hence failed of final ratification. Appropriations have been made by Congress, however, in accordance with its stipulations.

By an Executive order dated April 12, 1870, a tract of land, being part of the country belonging to the Arickarees, Gros Ventres, and Mandans, according to the treaty of Fort Laramie, with the addition of a small strip, was set apart as a reservation for these Indians.

By an Executive order of July 13, 1880, the lines of the reservation were modified, and the present reservation established.

It contains an estimated area of 2,912,000 acres, a much smaller tract than was recognized by the treaty.

Of this amount the Indians cede, according to the report of the Commission, about 1,600,000 acres, retaining about 1,300,000 acres.

From an examination of the map, however, it appears that the Indians cede about two-thirds of the reservation, or 1,950,000 acres, if the estimate of the entire reservation is correct.

The total amount of compensation for the relinquishment of the right of occupancy to this large tract of land is apparently $800,000, or 50 cents an acre at the highest estimate.

Congress has annually for many years appropriated from $38,000 to $60,000 for the support of these Indians, and the Indian appropriation bill, as passed by the House of Representatives, contains an appropriation of $50,000 for their support during the next fiscal year.

As the proposed installments of $80,000 each are to be in lieu of all other appropriations for their support, the actual cost to the Government of fulfilling the stipulations of the agreement is much less than the apparent cost.

I regard the agreement as exceedingly favorable to the Government, as well as to the Indians, as it will, if faithfully carried out, enable them to become self-supporting and to be entirely independent of the Government at the expiration of the ten years.

The diminished reservation will contain an ample quantity of grazing land as well as of agricultural lands.

The number of Indians belonging to the reservation is reported as 1,322.

I must say, however, that, in my opinion, it would have been much better if the agreement had provided for the sale of the unallotted residue of the diminished reservation after the expiration of the twenty-five years, the money arising therefrom, or the income thereof, to be used for the civilization and education of the Indians, instead of the provision for patenting to the tribe the said residue at the expiration of that time.

The agreement as it now stands tends to perpetuate tribal relations, and after the expiration of the twenty-five-year limit creates, in a manner at least, a kind of landed aristocracy, both of which are antagonistic to the policy of the Government and, as I believe, the best interests of the Indians.

the accompanying item in lieu thereof.

As the agreement makes no provision f serve, this will have to be borne by the

I therefore have the honor to recom subdivision of Indian reservations and of allotments in severalty contained in said

It is also recommended that a copy of t mitted to the House Committee on Indian

The SECRETARY OF THE INTERIOR.

SIR: The Commission appointed under May 15, 1886, to negotiate with certain I west Territories (Indian appropriation act) agreement concluded on the 14th of the pre tre, and Mandan tribes, occupying the Fort

Upon completion of the work in Minnesot a member of the Commission, and Jared W. his stead.

The act referred to authorizes negotiation of their reservation or removal therefrom to

In the special instructions issued for our advised that the Indians had but recently portion of their reservation lying north of t of the Missouri and White Earth rivers, a to effect an agreement with said Indians fo should be found desirable, after a thorough ble terms as to compensation.

The Fort Berthold Reservation embraces miles, and is occupied by 1,322 Indians of tribes. The adult male population (over ei ber of families 337.

The reservation contains some excellent souri River and on the tributary streams, b grazing purposes, in which respect it is sa raising region.

By the terms of the agreement entered i nearly two-thirds of their reservation, reser 48th parallel of north latitude, and east of west from the most westerly point in the h lands being

agent. A few of the older men, among the Gros Ventres and Mandans especially, made some objections to the allotment plan, but when shown the positive advantage of individual ownership, they all consented to the proposal.

The great body of the land that will be taken up in making the allotments lies from 15 to 30 miles west from the present site of the agency, on the east side of the river, and it will probably be found necessary to remove the agency to a point farther up the river, not only for the greater convenience of the service, but for the accommodation of the Indians.

We have, therefore, made provision for the removal, leaving the question as to the advisability of the change to the discretion of the Secretary of the Interior.

Your Commissioners reached the railroad at 4 o'clock this afternoon, and have hurriedly prepared this report in order to transmit the agreement to the seat of Government on the train leaving at 5 o'clock.

Very respectfully, your obedient servants,

JOHN V. WRIGHT,
J. W. DANIELS,
C. A. LARRABEE,
United States Commissioners.

Hon. J. D. C. ATKINS,
Commissioner of Indian Affairs, Washington, D. C.

In the judgment of your committee the sixth article of said agreement is objectionable, in this, that it provides for conveying to said Indians, in common, the diminished reservation and to be held by the tribes in common. This manner of holding lands is exceedingly objectionable, and would prove prejudicial to the interests of the Indians. No one Indian could secure at any future time title to any portion of said diminished reservation, and it would furnish an opportunity for the strong to control it against the right of the weak. And your committee recommend that said article 6 be modified and changed so as to permit said Indians to hold the residue of said reservation, as a reservation, and such modification be re-submitted to said Indians for ratification, which fact, when ratified and accepted by them, shall be made known by proclamation by the President.

Your committee recommend the confirmation and ratification of the agreement with the following modifications, and the passage of the bill with the following amendment to be added to section 1 thereof:

"Except as to article 6 thereof, which is modified and changed on the part of the United States so as to read as follows:

"'That the residue of lands within the said diminished reservation, after all allotments have been made as provided in article 3 of this agreement, shall be held by the said tribes of Indians as a reservation, and as so modified said agreement is accepted and confirmed:' *Provided*, That said act shall take effect only upon the acceptance of the modifications as made by the United States as to article 6 of the said agreement by the said tribes of Indians in manner and form as said agreement was assented to, together with said acceptance; and consent shall be made known by proclamation by the President of the United States upon the satisfactory proof presented to him that the same has been obtained in such manner and form."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 83.

PUBLIC LANDS IN CALIFORNIA.

February 15, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. De Haven, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill S. 269.]

The Committee on the Public Lands, to whom was referred the bill (S. 269) granting to the State of California 5 per cent. of the net proceeds of the cash sales of public lands in said State, report as follows:

Your committee recommend the passage of this bill. Its preamble contains a statement of the facts which show that the proposed legislation is proper; and to this preamble and the majority report of this committee in the Fiftieth Congress, recommending the passage of a bill having the same purpose, we refer. That report (House Report No. 70, Fiftieth Congress, first session) is as follows, and we adopt the same and make it part of this:

[House Report No. 70. Fiftieth Congress, first session.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 1235) granting to the State of California 5 per cent. of the net proceeds of the cash sales of public lands in said State, make the following report:

A similar bill was reported from this committee in the Forty-eighth and Forty-ninth Congresses, and also reported in the Senate in the Forty-seventh, Forty-eighth, and Forty-ninth Congresses, and passed the Senate in the latter Congress, but was not reached on the Calendar in the House.

This bill is in accord with settled legislative precedents followed and adhered to by Congress in the case of every other public-land State heretofore admitted into the Union. It makes no grant other than or different from that made by Congress to every other public-land State in the Union, but simply places California upon an equal footing and upon the same plane with all other public-land States in regard to existing laws relating to the 5 per cent. of the net proceeds of the cash sales of the public lands in said States respectively.

California, unlike the other new or public-land States, entered the Union without any enabling act; but the third section of the act under which she was admitted into the Union shows that the United States attached all the conditions to her admission, so far as those conditions could be performed by California, as were attached to the admission of all the other public-land States. But the United States have, up to this late date, failed, and, in the opinion of very many of her people, unjustly delayed, to give to California, in consideration of those conditions, that equivalent which has been heretofore given to all the other public-land States named in the preamble of this bill.

While all the other public-land States have already received this 5 per cent. grant as an equivalent or as an indemnity for considerations by them surrendered to the United States, California is the only public-land State which, having surrendered like considerations to the United States, has not as yet received this 5 per cent. grant as a similar equivalent or indemnity for the surrender of similar considerations.

Section 3 of the act of her admission, approved September 9, 1850, is as follows:

Section 3. *And be it further enacted*, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their

as to those imposed upon the other public-la
the very act admitting California into the Ut
conditions, is likewise irrevocably bound to
other public-land States are bound to do.

Therefore the United States have already r
in advance, the identical considerations for t
indemnity now proposed to be made to her un
the consideration the United States received f
States for making similar grants to them, and
to any public-land State except California, wi
alone.

California, in contemplation of the objects
States—that all the States of this Union shall
possible, and that all the new public-land St
equal to each other as possible—was therefore a
not on a footing of difference, but on one of per
other public-land States so far as this 5 per cen

Your committee therefore recommend the pa

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 84.

ALBERT H. EMERY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Ray, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3538.]

This bill has been favorably reported upon no less than five times in the House of Representatives; three times for $200,000, once for $100,000, and once for $150,000; and four times in the Senate; three times for $200,000, and once for $225,000; has passed the Senate once for $225,000 and twice for $200,000, but was never reached in the House but once—the last session of the Forty-ninth Congress—when it was passed for a reduced amount, and on conference of the Senate and House was sent to the President in the closing hours of Congress for $100,000, but was not acted on by him. The Senate report of the last Congress was for $200,000, and is as follows:

[Report No. 1584, Forty-sixth Congress, second session.]

The Committee on Claims, to whom was referred the bill (H. R. 5990) for the relief of A. H. Emery, have considered the same, and respectfully report:

By an act approved March 3, 1873, Congress appropriated $25,000 for improved machinery for testing American iron and steel. (17 Stat. at Large, p. 547.) Under this appropriation the Ordnance Department ordered of A. H. Emery, civil engineer, of New York, a testing machine, to be designed and built by him, and erected at the Watertown Arsenal, Mass., as will more fully appear from the memorial of the claimant accompanying the message of the President to the House on the 16th of April, 1880. (See Ex. Doc. No. 74.)

2. The papers contained in said Ex. Doc. No. 74 show that under this order the claimant diligently and continuously proceeded with the designing and construction of the said machine. During the progress of this work Congress passed an act, approved March 3, 1875 (18 Stat., p. 399), appropriating $50,000 for "experiments in testing iron and steel, *including the cost of any machine built for the purpose*," and the above appropriation of $25,000 made by the act of March 3, 1873, was made available as a "further sum" for the purpose of building such machine. (See section 4.) This section also provided that the President should appoint a board, consisting of one engineer and one ordnance officer of the Army, one line officer and one engineer of the Navy, and three civilian experts, for the purpose of making tests of the strength and value of all kinds of iron and steel and other metals, and for the building of a *suitable machine* for establishing such tests. The President appointed on this board General Q. A. Gillmore, Engineers, United States Army; Col. T. T. S. Laidley, of the Ordnance Bureau; Commander L. A. Beardslee, United States Navy; David Smith, chief engineer, United States Navy; General William Sooy Smith, civilian, civil engineer; A. L. Holley, civilian, civil engineer; R. H. Thurston, civilian, civil engineer.

3. Under this act, which placed the board above named in the position formerly held by the Ordnance Office as regards this machine, the said board made a new contract

with the claimant after he had been at work upwards of a year and a half under his original contract. By the said new contract the board required certain additional apparatus, which increased the weight of the machine about 10 per cent., and for this additional apparatus added $6,500 to the original contract price, thus changing the price to be paid from $25,000 to $31,500.

4. Under this contract the work was continued unremittingly until the 8th of February, 1879, when the machine was completed and accepted.

5. From statements of the claimant, which there is no reason to doubt, it appears that his inventions embodied in this machine were for the most part matured prior to the date when the machine was ordered, to wit, the 24th of December, 1873. The papers show that at that time no design of the machine had been made, and that the claimant pursued with untiring industry and skill the designing, constructing, testing, and perfecting of this machine, which proved to be an unexpectedly difficult and expensive task. Colonel Laidley, president of the board above alluded to, says in regard to this, in a letter addressed to the President of the United States, dated February 10, 1879, two days after the machine had been accepted by the board, as follows:

"In the plans designed by Mr. Emery he adopted new principles, in the working out of which he met, as is always the case under such circumstances, with great and unlooked-for difficulty. In overcoming these difficulties, Mr. Emery has spent more money than he has received for the entire machine, to say nothing of his other expenses, time, labor, etc. He has throughout, in the performance of his part of the contract, shown a greater desire to make the machine perfect in all its details than to complete the work and obtain his money. The result of this unusual devotion is that the United States has at this time a more perfect machine then was called for by the terms of the contract."

And in the same report to the President, in speaking of the character of the machine, he uses the following language:

"This machine combines the qualities of power and delicacy to an extent hitherto unknown, and is equally adapted to the testing of the ultimate strength of an iron bar 30 feet in length and 5 inches in diameter and of a piece of wire of the finest size drawn 1 inch long, and is capable of giving the exact strain of rupture of each. This is more than can be said of any other machine now in existence; in fact, its capabilities and the ease with which the greatest strains are applied are such as to pass even the bounds of belief of those who have not witnessed its operation."

6. At the time of the acceptance of the machine, and prior to this report of the president of the board to the President, attention was called to the fact that the cost of the machine was vastly in excess of the contract price. The claimant, without examination of his accounts, stated that the cost was at least $100,000. One member of the board then recommended the payment of not less than $45,000 additional compensation, while five other members of the board recommended the payment of $70,000 additional, which latter amount, added to the contract price, would only have reimbursed him for actual outlay as then estimated without any compensation for his own time and skill or for the use of his inventions.

7. The said members of the board, while recommending the payment of $70,000 additional compensation, state that as the board did not intend the machine should be made without a reasonable profit, they would, had the contractor asked it, have recommended that he be paid for his time as well as disbursements.

8. The above-referred to report and letters of recommendation were made the subject of Senate Ex. Doc. No. 68, parts 1 and 2, Forty-fifth Congress, third session, which reached Congress so near the close of the session that no action was taken thereon.

9. Since that time the claimant has accurately ascertained the cost of the machine, and has furnished a detailed statement thereof, certified by affidavits of himself and of the parties who furnished the labor and materials. His memorial setting forth the history of the case, with proofs of the cost of the machine, were inclosed in his letter to the President, dated March 27, 1880, which papers, with the indorsements thereon, were made the subject of a special message of the President to the House, dated the 16th of April, 1880, and found in Ex. Doc. No. 74, present session.

10. The documents further show that before the machine was designed it was expected to contain, when completed, about 80,000 pounds of finished metal work, whereas it really contains about 170,000 pounds, and more than twice this quantity (or upwards of four times the amount it was originally expected to contain) was put into the furnaces and forges to produce it.

11. It further appears from the documents on file that in order to produce such a machine as the Government and the board required, many parts, though constructed with great care, had to be made over and over again; and without entering into details as to changes, enlargements, new inventions and devices that were made and used to perfect the machine, it is sufficient to say that the proofs show the actual cost of the machine to have been upwards of $129,000, for which he has received $31,500, exclusive of interest. These proofs as to cost and other details were submitted to

Colonel Laidley, president of the board, and carefully examined by him, and will be found in detail in Ex. Doc. No. 74, above cited.

12. This cost does not include any allowance for the value of the invention used in the machine, nor is there embraced in it anything for profits; both which items should be considered in fixing the amount to be paid, for no one could wish the Government to use this machine, even at cost, without compensation to him for his inventions and his time, nor that he should assume the heavy expense and risk involved without a fair profit.

13. The above would have been a reasonable basis of settlement but for the fact that in the sundry civil bill approved June 20, 1878, Congress enacted—

"That the Secretary of War is hereby authorized to cause the machine built for testing iron and steel to be set up and applied to the testing of iron and steel for all persons who may desire to use it, upon the payment of a suitable fee for each test; the table of fees to be approved by the Secretary of War, and to be so adjusted from time to time as to defray the actual cost of the tests as near as may be; and, in order to make the final payment on contract for the construction of this machine, the sum of $6,299.48 of the unexpended balance now remaining on the books of the Treasury of the appropriation for this purpose is hereby reappropriated and made available therefor."

This act, passed while the claimant was setting up his machine, virtually deprived him of the proper use of his inventions, most of which he had matured before the machine was ordered for the use of the Government, and in the development of which he had spent, as has been shown, more than five years of time. The use of the machine by the Government for the benefit of the public for merely nominal fees, manifestly deprives the claimant of any considerable market for the sale of these machines.

14. It is not the Government only which is interested in testing the strength of materials, but manufacturers, constructing engineers, builders, and in general the whole public, who are constantly exposed to peril from the treachery of metallic structures of uncertain strength.

15. A letter from members of the board, dated February 17, 1879 (see Senate Ex. Doc. No. 68, Forty-fifth Congress, third session), says:

"He has spent every dollar he asks and more, we believe, on this machine, and the Government has got the value of the expenditure tenfold as compared with the value of any other known testing machine."

16. The Secretary of War, in his letter to the President, informs him that this is the most perfect testing machine in the world, and that Colonel Laidley and other members of the board recommend the payment of $200,000 to the contractor.

17. The following are the communication, of the President and Secretary of War on the subject, embraced in Ex. Doc. No. 74, before referred to:

"EXECUTIVE MANSION,
"*Washington, D. C., April* 16, 1880.

"*To the House of Representatives:*

"The board for testing iron, steel, and other metals, appointed under the authority of 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1876, and for other purposes,' contracted with Mr. A. H. Emery, of New York, for a testing-machine, to be paid for out of the appropriation made for the purpose. That machine has been completed and accepted, and is now in position at the Watertown Arsenal, Massachusetts. It is spoken of by the members composing the late board as the most perfect and reliable machine in the world, embodying new mechanical principles and combinations not heretofore used in any other constructions.

"In designing, perfecting, and making this machine, the contractor has expended large sums of money over and above the contract price, besides giving years of labor for which he has received no compensation. He now appeals to Congress for relief, and the papers herewith exhibit a case that calls for Congressional action. It is respectfully submitted to the House of Representatives, recommending speedy and favorable consideration.

"R. B. HAYES."

"WAR DEPARTMENT,
"*Washington City, April* 14, 1880.

"SIR: I have the honor to return the papers in the claim of Mr. A. H. Emery.

"These papers have been referred to the Chief of Ordnance, and your attention is invited to his indorsement, and to that of Colonel Laidley, president of the late board on steel and iron, as well as to the views of some of the members of the board.

"This is a case that calls for Congressional action. These papers show that it is one deserving favorable consideration.

[illegible]

[illegible]

"[illegible]

"[illegible]

"

dersigned to modify and increase the sum which, in his opinion, the Government could well afford to pay for this machine and the losses its action has inflicted.

"When the contractor undertook to build this machine he confidently expected that it would be completed within six months, whereas nearly five years were consumed in its perfection. This is nearly one-third of the entire life of his valuable patents, and involves a loss to him, without any fault of his, which, though doubtless great, it would be difficult accurately to estimate.

"It rarely happens in the development of any new invention that the first construction does more than show what may be accomplished in succeeding efforts. In the present instance, however, so thoroughly were all the details digested, and such frequent changes made in drawings before they passed into the hands of the workman, that this first machine forms a marked exception to the general rule, and is more perfect in all its parts than could have been reasonably expected under the terms of the contract. This result, however, has not been accomplished without long and laborious study, and a corresponding increase of expense to the contractor. Since the Government is thereby the gainer, it can well afford to offer a substantial compensation therefor. Had the contractor failed to raise the necessary funds to complete the machine in accordance with his high standard of excellence, the undersigned, though conversant with the testing machines used by the principal nations, knows of none which could have been procured combining all of the desired qualities to the extent of that the United States now possesses. No one who has witnessed the facility of its operation, and understood the principles upon which it is based, has failed to appreciate and be impressed with the delicacy and accuracy of its determinations. This is a matter of no small importance, since it is to form the standard throughout the country for measuring such strains as are ordinarily determined by testing machines. Its reputation is not confined to this continent, but wherever a knowledge of its capabilities has extended it reflects credit upon the American name.

"Under these circumstances the Government can well afford to be liberal with the contractor and make a fair compensation to him for his great creative power and unremitting labor during the five best years of his life.

"The amount of $200,000, if now paid by Congress, would not, in the judgment of the undersigned, be excessive, or more than sufficient to pay the contractor a fair equivalent for his unusual devotion to the interests of the Government, the work performed by him, and the losses sustained during the time that he has given up his undivided energies to this undertaking.

"T. T. S. LAIDLEY,
"*Colonel of Ordnance, Commanding.*"

"We, the undersigned, formerly members of the United States board for testing iron and steel, had supposed that the testing machine had cost the sum stated by the contractor, and no one who has seen the machine will be surprised to learn that it has really cost a larger sum, as ascertained by the contractor in making up his accounts. We fully agree with Colonel Laidley in all his remarks with regard to the quality and value of the machine and the services rendered by Mr, Emery in designing and constructing it; and we think that he is justly entitled to compensation for its cost as shown and the allowance he asks as a contractor, and that he should be paid for his time and the use of his patents in the construction of said machine. We also think that Congress and the country can well afford to pay him the sum of $200,000 to settle his claim; and should any part of the cost of the machine or other part of his claim be for any cause disallowed, we would still recommend that a sum not less than $200,000 be paid him in recognition of his genius, fidelity, and services; and if not paid now, we would recommend a larger sum hereafter as including compensation for delay.

"WM. SOOY SMITH, *C. E.*
"A. L. HOLLEY.
"Q. A. GILLMORE,
"*Lieut. Col. Eng., Bvt. Maj. Gen.*"

"[3d indorsement.]

"ORDNANCE OFFICE, WAR DEPARTMENT,
"*Washington, April* 13, 1880.

"Respectfully returned to the Secretary of War, inviting special attention to the indorsement of Colonel Laidley, president of the late board on steel and iron, and the views of a majority of the members. The other members of the board, being absent or sick, have not been consulted.

"As stated in my indorsement of February 18, 1879, herewith, I know nothing of the merits but what is made to appear by these papers. The inventor has produced a testing-machine believed to be the most reliable and perfect in the world, and reflecting the greatest credit on the inventive genius and mathematical skill of one of our citizens. No one can question the fact that in the laudable desire to do his whole

duty to the country, and give it the master-piece of his designing and constructive genius, he has seriously involved himself pecuniarily, and has not received any compensation for his very arduous labors. In the construction of this machine he has expended large sums over and above the amount paid him under the contract.

"It is a case that appeals strongly to our sympathies and to our sense of justice equitably considered. In this view I respectfully recommend this matter to favorable consideration.

"S. V. BENÉT,
Brig. Gen., Chief of Ordnance."

"20. The documents before us show that the claimant has not only been waiting for the money equitably due him since the time when the machine was accepted, but that a large part of the disbursements now to be refunded were made during the period from 1873 to 1879; and it would have been but reasonable, in a work of this magnitude, that payments should have been made by the Government from time to time as expenses occurred.

"21. It will be seen that the President, Secretary of War, Chief of Ordnance, and president and members of the board all recommend speedy and favorable consideration.

"22. Your committee recommend an appropriation of $[illegible], as provided for in House bill No. 5080.

"23. Legislation in reference to this machine may be found in the regular appropriation bills (viz: Army bill, approved March 3, 1873; sundry civil bill, approved March 3, 1875; sundry civil bill, approved June 20, 1878; Army bill, approved May 4, 1880, appropriating money for the use of this machine.)

"Your committee therefore report the accompanying bill as a new draught of the one committed to your committee, and recommend that the same do pass."

The bill having been placed on the Calendar near the close of the long session, was not reached during that or the succeeding short session.

On the same date, June 3, 1880, Senator Cameron, of Wisconsin, who had examined this case in the Senate Committee on Claims, offered an amendment to the "sundry civil bill," providing that $[illegible] be paid to settle this claim, as provided in House bill No. 6373, which accompanied the above report of the House committee. This Senate Committee on appropriations, to whom this amendment was referred, while acknowledging the justice of the claim, declined to report it simply because it was a claim, and, therefore, should go in a bill by itself.

A similar amendment, providing for the appropriation of $200,000 to settle this claim, was proposed to the deficiency bill by Senator Booth on the 9th of June, 1880, and was also referred to the Committee on Appropriations; it was not reported for the same reason.

On the same day Senator Kernan introduced an amendment to the sundry civil bill providing for an appropriation of $50,000 for continuing tests of iron and steel with this machine for the coming year.

The Secretary of War, in recommending this appropriation, wrote as follows:

"I am satisfied, from the opinions of experts, that the determinations of formulas and facts in regard to metals will be of great value to the industrial interests of the country. Miscellaneous Document No. 38 of Forty-fourth Congress, second session, gives the written opinions of scientific and industrial associations in favor of an appropriation of $50,000 to be used in experiments. It is stated by reliable authorities that two hundred railroad bridges have fallen within ten years; a single one of these, the Ashtabula bridge, caused an estimated loss of about $2,000,000—over $750,000 having been paid for loss of life and limb alone in that accident. These trials and tests of metals are absolutely necessary to determine the strength of material and prevent such accidents—the tests with this machine showing that large bars break under a much less strain than has heretofore been accepted as their actual strength, many breaking with from six to eight-tenths of the load they were expected to bear." (Congressional Record, June 10, 1880, page 52.)

In the discussion on this amendment Senator Wallace, of Pennsylvania, said:

"I regard this as a most meritorious invention; one that has not been equaled in the history of this country in regard to its value. Its inventor has, at large expense to himself and at the request of officials of the Government, created and constructed this machine. It is now in the custody of the Government, and very valuable results are coming from it."

And Senator Eaton said:

"In my opinion this appropriation ought to be made. This is the most extraordinary machine in this or any other land. I undertake to say that in the great works the Government now has in hand, in the $100,000 of iron that it is about to purchase for use here in Washington City, it ought to know the strength of the iron that it puts in its new buildings here and everywhere else where we are building, so as to know exactly the resistance which the iron which we shall purchase to-morrow will

bear before we buy. Let us know it; let us test it. This machine will do it. It will test the strength of a bar of iron as large as the body of any man in the world, or the strength of the finest needle that can be made out of steel, so fine is it in its operations as that.

"Sir, I hope we shall use this machine; let us use it. If it be necessary to use it for the benefit of the people, let us do it. As we appropriate gladly money to take care of the cotton-worm in the South or the bug of the Rocky Mountains, let us do this for the benefit of all the people of the land." (Congressional Record, June 11, 1880, pages 36 and 37.)

The report of the Secretary of War, of November 19, 1880, page 22, referring to the report of the Chief of Ordnance, says: "He reports the successful operation of the United States testing-machine at the Watertown Arsenal, adding that this machine is considered the most perfect testing-machine in the world, equally able to test a single hair and the largest column or specimens by either tension or compression with any load desired, from 1 to 800,000 pounds, being of any length from 1 inch to 30 feet. Its determinations are of great value to the Departments of the Government and to the scientific and industrial interests of the whole country. The memorial of its inventor, asking for additional compensation and reimbursement, is commended to the favorable consideration of Congress."

The Secretary of the Treasury, in transmitting the estimates of deficiencies in appropriations for the year ending June 30, 1881, includes in the estimates of the Secretary of War $200,000 to settle this claim, as follows:

"To pay to Albert H. Emery, of the city and State of New York, in full settlement of all claims, legal or equitable, which he has in any way against the United States on account of the cost of the testing-machine built and erected by him for the United States, including the time spent by him in designing and constructing the said machine, together with the use of all patents and inventions used therein: *Provided*, That said machine, together with the full right to the use therein of all patents and inventions used in its design and construction, shall belong to the United States.

"NOTE.—The Chief of Ordnance 'reports the successful operation of the United States testing-machine at the Watertown Arsenal,' adding that this machine is considered the most perfect testing-machine in the world; equally able to test a single hair and the largest column or specimens, by either tension or compression, with any load desired, from one to eight hundred thousand pounds, being of any length from one inch to thirty feet. Its determinations are of great value to the Departments of the Government and to the scientific and industrial interests of the whole country. The memorial of its inventor, asking additional compensation and reimbursement, is commended to the favorable consideration of Congress."—(*Extract from report of Secretary of War, November* 19, 1880, *page* 22.)

"Attention is also invited to the message of the President of the United States, dated April 16, 1880 (House Ex. Doc. No. 74, Forty-sixth Congress, second session), recommending favorable action in this case, and the report (No. 1584) of the Committee on Claims of the House of Representatives, dated June 3, 1880, to accompany bill H. R. 6373, Forty-sixth Congress, second session."—(H. R. Ex. Doc. No. 14, Forty-sixth Congress, third session, p. 17.)

The House Committee on Claims passed unanimously a resolution recommending that the above sum of $200,000 be included in the deficiency bill, as recommended by the Secretary, for this purpose; but the Committee on Appropriations, while admitting the justice of the claim, declined to include it in the deficiency bill.

To show the estimation in which this machine was held by the industrial and scientific world, your committee quote the following from the New York Times of November 18, 1881:

"MR. EMERY'S TESTING-MACHINE AWARDED THE GRAND MEDAL OF HONOR AT A BOSTON FAIR.

"The managers of the Massachusetts Charitable Mechanics' Association Fair, which closed in Boston last Saturday afternoon, after an unusually successful season, have announced but one award, that of a grand medal of honor, which was made to Mr. Albert H. Emery, a civil engineer of this city, for his great testing-machine, which was on exhibition at Watertown Arsenal, in connection with exhibits of specimens tested thereon, which were shown at the fair. This medal is an elaborate piece. It consists of a shield of gold resting above a circle of white enamel, within which is a field of deep blue enamel, with the words 'Medal of honor.' Around the circle is a laurel wreath in gold, with the raised arm—the emblem of the association—between two laurel branches, while below, on a scroll of emerald green, are the words 'Be just and fear not.' The other inscriptions upon the circular band and the shield are the name of the association and the date of the award.

"The medal is said to have cost $500. Its principal value is derived not from its material or artistic design, but from the sources through which it was awarded. It

was provided by the fair association, but was awarded by the American Academy of Arts and Sciences for that 'exhibit most conducive to human welfare,' which was the highest requirement that any exhibit could be called upon to sustain. The high standing of this body, including as it does many of the most noted scientists in this country and Europe, is too well known to require comment here, and it gives great force to that part of the judge's report which refers to the machine as 'the greatest invention in mechanism of the present century.' The exhibits shown from this machine embraced various specimens for tension and compression—those for tension including a forged bridge link of wrought iron of 20 square inches section, steel boiler plates, cables from the East River Bridge, etc. Those for compression included specimens of large wrought iron and wooden columns, which were crushed, down to specimens so feeble in resistance as eggs, some of which were tested by compression to show the strength of the shell. There was included in this exhibit one of several gun-blocks, 11 inches in diameter and 22 inches long, which were burst in this machine.

"Attention has already been called in a number of articles in the Times to the remarkable construction of this wonderful piece of ingenious mechanism, which now, after nearly three years' use in crushing and breaking large specimens with loads up to 800,000 pounds, the shock of which is received on the scale, appears wholly uninjured, and still shows distinctly the strain on a single horse hair. This machine is in constant use, and its determinations are invaluable to the engineering, mechanical, and scientific world."

This grand medal of honor which was thus awarded for the "exhibit most conducive to human welfare," is, so far as your committee are informed, the only one of the kind ever granted in this country, and confers great honor on the machine and its inventor.

The estimate of the cost of the machine was made to January 1, 1880, and the board recommending the appropriation of $200,000 to pay for it said that, if not paid at that time, they would recommend a larger sum thereafter as including compensation for delay.

Not only would it be of great advantage to the claimant to have this claim settled very promptly, but it would be of benefit to the country in enabling him to complete and introduce his valuable inventions.

Your committee therefore report back the bill without amendment, and recommend that the same do pass.

After a careful consideration of the facts in this case your committee find that the recommendation of the Government Board, consisting of one engineer and one ordnance officer of the Army, one line officer and one engineer of the Navy, and three civilian experts, appointed by the President of the United States under an act of Congress to test iron and steel and inspect the building of this machine, is entitled to great weight as to the character and value of the machine and the amount that Congress should pay the claimant.

It is entitled to great weight because this Board was created by Congress for the purpose of inspecting its construction, with power to enlarge the conditions of the contract, to make new requirements of Mr. Emery, to reject the machine, or to approve and accept it for and on behalf of the Government.

It had an opportunity to know the items of expenditure incurred in its construction and the character and value of the work performed by Mr. Emery.

Under the authority of the Board a machine originally designed to contain about 80,000 pounds of metal work in the end contained about 170,000 pounds, and more than twice this quantity or upwards of four times the amount it was originally expected to contain was put into the furnaces and forges to produce it.

This Board continued in the performances of its duties from the early part of 1875 to February, 1879, the date of the approval and acceptance of the machine.

Your committee are of the opinion that the authority exercised by this Board as the agents of the Government over the work performed by Mr. Emery, as above stated, and as more fully set forth in the foregoing report adopted by the Senate committee, and their statements and

testimony as to the cost and value of the machine, would be conclusive upon the Government, if this case were pending in a Federal court of competent jurisdiction.

One of the most distinguished officers of this Board, Colonel Laidly, says, as far back as 1880:

The amount of $200,000, if now paid by Congress, would not, in the judgment of the undersigned, be excessive, or more than sufficient to pay the contractor a fair equivalent for his unusual devotion to the interests of the Government, the work performed by him, and the losses sustained during the time that he has given up his undivided energies to this undertaking.

Another equally distinguished member of this Board, General Q. A. Gillmore, in his letter of February 20, 1882, to Senator Hawley, says:

In the matter of Mr. A. H. Emery's services and time spent in designing and constructing the testing-machine now in use at Watertown Arsenal, I respectfully submit that a fair allowance ought to be made for the time which he devoted to this enterprise in addition to the disbursements he made on his account; otherwise, the labor of his life will in a great measure be lost to him financially. To produce this machine he not only had to spend the long years which were occupied in its production, but the many previous years of study and very expensive experimental works, before he could possibly produce such a machine as this proves to be. He has not only lost this large amount of time, but by a law passed while he was erecting this machine he has been deprived in great measure of the value of these inventions; the law referred to giving the use of the machine to all persons at merely nominal charges for its use. This necessarily tends to prevent a profitable sale of such machine.

Having in this way deprived his patents of much of their value at home, it would seem to be a very moderate compensation to pay him for the time spent in perfecting and building his first machine.

As a member of the Board which secured Mr. Emery's services for this work, and inspected it from time to time, I do not speak at random. It was the opinion of that Board—the unanimous opinion, I think—that he was the only man in the country capable of designing and constructing a piece of work so perfect in its action and results, and so well adapted to the end in view.

Not only these but the Board as a whole unite in saying:

We also think that Congress and the country can well afford to pay him the sum of $200,000 to settle his claim, and should any part of the cost of the machine or other part of his claim be for any cause disallowed, we would still recommend that a sum not less than $200,000 be paid him in recognition of his genius, fidelity, and services; and, if not paid now, we would recommend a larger sum hereafter as including compensation for delay.

The late Secretary of War, Mr. Ramsey, in transmitting the papers in this case to the President, quotes, with approval, the recommendations of Colonel Laidly and the other members of this board, and adds:

It appears to me that liberal action on the part of Congress toward one of our citizens who has lost so much in faithfully carrying out his contract would be but proper and equitable.

The Secretary of the Treasury, in June, 1881, included in his estimates, with a favorable recommendation to Congress, the sum of $200,000 to settle this claim.

Senators and members of Congress and distinguished civilian experts, without distinction of party, who have seen this wonderful machine in practical operation at the Watertown Arsenal, and who are familiar with its history, character, and value, recognize its great merit and advocate the payment of the claimant upon a just and liberal basis.

Of these Hon. Abram S. Hewitt, having special knowledge of iron and steel, said in Congress of this machine, in July, 1882:

It is perhaps the most remarkable exhibition of mechanical ingenuity that has been produced in our time, and the inventor, Mr. Emery, has recently received from the Machinists' Charitable Institution of Massachusetts the medal which they confer once in a long period upon the invention which is the most calculated to advance the interests of mankind.

Senators who have investigated the cl
Fulton, and Morse and Siemens, and the oth
skill and genius, have done so much to dev
during the last fifty years.

The Government comes to this man, who h
asks him to make one of his great machines.
pends upon it—I speak roughly—$100,000 m
him. I speak in round numbers. The Gov
that $100,000, takes his machine, which nobo
use of every individual in this country who
Then it allows him for five years longer to
upon his shoulders, and chills every inventiv

From Senator Hoar:

Mr. Emery paid out $129,000 in actual cash,
public benefit. Of that $129,000, he has rec
compensation for his invention, which the U
taken into its own custody and possession, an
this appropriation.

From Senator Voorhees:

There the Secretary of War's estimate of $2
of the Treasury, and I can only repeat myself
the end, from the incipiency of the history of t
swells upon the regard of every man that look
examined; there is nothing like it to-day bene
and there is no other such machine in existence.
proud triumph to the inventive genius which
displayed; and instead of caviling and carpin
not only fair and reasonable, but it is small in co
are to be achieved by this invention.

From William Sellers, of Philadelphia and best engineers in the world, in a Samuel J. Randall:

I am somewhat responsible for this claim in
obtained his first appropriation for building a te
the purpose of having me design and build it.
had visited me for the purpose of showing me hi
kindred appliances, such as weighing machines, e
had developed some new and important principle
testing-machine, and I advised Colonel Laidle
Emery for constructing the machine he wanted.
we have now in this country a machine that is in
its kind in the world.

time, and expense incurred in originating and developing the principles and designs for such a machine.

Second. A just and equitable claim for the repayment of the money actually advanced by him in the construction of the machine with the knowledge and under the direction of the Government board, over and above what he actually has received from the Government.

Third. Compensation for the loss and damage caused by and through the act of Congress approved June 20, 1878, which authorized the use of this machine by the public upon the payment of the actual cost of making the test, which action, it is conceded, virtually destroyed the business of the inventor in building testing-machines for the general market and the value of his patents.

We call attention on this point to the decision in the Supreme Court of the United States, in the case of James *v.* Campbell (104 U. S. Reports, page 358), in which the court say:

> That the Government of the United States, when it grants letters patent for a new invention or discovery in the arts, confers upon the patentee an exclusive property in the patented invention which can not be appropriated or used by the Government itself, without just compensation, any more than it can appropriate or use without compensation land which has been patented to a private purchaser, we have no doubt.

Your committee therefore recommend that the said bill (H. R. 3538) be amended by striking out the words "two hundred thousand dollars," and inserting the words "one hundred and seventy-five thousand dollars," and that the bill, as so amended, do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 85.

OWNERS, OFFICERS, AND CREW OF BRITISH BARK CHANCE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Ray, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2234.]

The Committee on Claims, to whom was referred the bill (H. R. 2234) for the relief of the owners, officers, and crew of the British bark *Chance*, having had the same under consideration, respectfully report:

Bills similar to this were favorably reported from the Committee on Foreign Affairs of the Forty-sixth and Forty-seventh Congresses, and also from the Committee on Claims of the Forty-ninth and Fiftieth Congresses, but failed of action in the House.

The bark *Chance*, owned at Sydney, New South Wales, had been fitted out in March, 1871, at an expense of £3,200 ($16,000), for a whaling voyage in the Arctic. She had a captain, chief-officer, four mates, and a crew of twenty-eight men.

She arrived on the whaling grounds early in September, 1871, and had a fine prospect of taking whales. The season is short, extending from about September 1 to the middle of October, and in 1871 whales were unusually plenty.

Our American whaling fleet of some thirty vessels had gone 60 miles farther north, and were caught in the ice. Four ships were wrecked, and the whole fleet was imprisoned, with no hope of escape.

The ship-masters sent a letter addressed to "any ship-master south of Icy Cape," in eloquent terms asking instant aid to save them from the danger that stared them in the face.

The letter closed as follows:

> We realize your peculiar situation as to duty, and the bright prospects you have for a good catch in oil and bone before the season expires, and now call on you in the voice of humanity to abandon your whaling, sacrifice your personal interests as well as that of your owners, and put yourselves in condition to receive on board ourselves and crew for transit to some civilized port, feeling assured that our Government, so jealous of its philanthropy, will make any compensation for your losses.

The moment this news came the master of the *Chance* gave up his voyage and got his ship ready to take on board all he had room for. With crowded decks the *Chance* sailed, September 15, for Honolulu, and arrived safely on the 29th of October. She had rescued from almost certain death ninety-six American seamen.

The ship happened to have an agent at Honolulu, who took the responsibility of drawing up an account, charging the United States at the rate of $35 a man for the officers and crew thus brought to port as

passengers. This was forwarded to Washington, without the sanction or special authority of the owners. However, upon learning of the fact, they ratified his action, and the sum of $3,360 was paid to the agent of the owners July 27, 1872.

This was done under the act February 28, 1811, for the relief of destitute seamen (2 Stat., 651), which reads:

> In all cases where distressed mariners and seamen of the United States have been transported from foreign ports where there was no consul, vice-consul, commercial agent, or vice-commercial agent of the United States to ports of the United States, and in all cases where they shall hereafter be so transported, there shall be allowed to the master or owner of each vessel in which they shall or may have been transported such reasonable compensation, in addition to the allowance now fixed by law, as shall be deemed equitable by the Comptroller of the Treasury.

Our statute for the relief of seamen in foreign ports was framed to meet the constantly-recurring emergencies of sailors being where an American ship happens to be lying. She is bound sooner or later to return home, and can take one or two extra men on board with no trouble and without deviating from her intended voyage. That is not this case.

Here a voyage sure of success was abandoned and the ship forced to go back the route she had come, the whole season's labor going for naught. In the ordinary case, contemplated by the statute, $35 per man for transportation and provisions may be regarded as sufficient. Here that sum could give only partial relief. The money went towards paying for the use of the vessel, and for provisions consumed. It did not represent the proceeds of the voyage, to be divided among owners, officers, and sailors, according to the "lay."

All parties in a whaling voyage are paid by "lays," or shares in the oil and bone taken. The officers and crew get no monthly wages; and of course they had everything to lose by giving up their certainty of taking whales.

These British owners and sailors incurred a heavy loss, in order to save the lives of our American seamen. No Government would have hesitated to dispatch public ships to the rescue, or to charter private vessels, if need have been, as witness the Greeley expedition.

The *Chance*, owned by foreigners and subject to no power of seizure by our Government, may be considered in some sense as having been impressed into the service of the Government of the United States.

Your committee are of opinion that the case presents urgent reasons for Congressional action. The owners of the *Chance* could get no indemnity for their loss from the insurers. In abandoning their voyage those in control of the *Chance* acted no doubt under the belief engendered by the suggestion of the letter that eventually this Government would recognize the character of the relief, and see to it that the loss was in whole or in part made up to them.

The master of the *Chance* indeed acted for humanity's sake, and this is not susceptible of being reduced to a matter of dollars and cents. Whatever indemnity may be tendered should not be considered, therefore, as forming a precedent, so far as amount is concerned.

The affidavit of one of the owners shows that all that the bark had of oil and bone was valued at $6,500. She had every prospect of taking 800 barrels of oil, worth $15,120; and 1,200 pounds of bone, worth $15,000. Allowing for what was on board, and for passage money received, it is evident that the breaking up the voyage entailed upon the owners, officers, and sailors a net loss at a moderate computation of from $15,000 to $20,000.

The owners, as well as officers and sailors (and their families), sustained this loss more than eighteen years ago. The claim was first presented to the Department of State in 1872, and the Department in January, 1878, recommended the claim to the favorable action of Congress.

In view of the services rendered and of the international features of the case, your committee are of opinion that the sum of $16,000, to be appropriated as the bill provides, is just and reasonable, and therefore recommend that the bill do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 86.

J. F. BAILEY & CO.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Laidlaw, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3913.]

The claimants imported in the years 1879, 1880, 1881, and 1882, steel blooms, upon which steel blooms the custom officials and the Treasury Department exacted and compelled the payment of a duty at the rate of 45 per cent. ad valorem.

The claimants objected to this rate of duty, but the collector of customs decided that that was the correct rate, and refused to allow the steel blooms to be taken by or delivered to the owners until that rate, viz, 45 per cent. ad valorem, had been paid. The Treasury Department sustained the collector of customs in this decision, and the claimants were compelled to pay a duty of 45 per cent. on the steel blooms that they imported, when the correct and legal duty was only 30 per cent. ad valorem.

In 1882 a suit was brought in the United States circuit court for the southern district of New York by R. F. Downing *et. al.*, against William H. Robertson, collector of the port of New York, for the return of the excessive rate of duty exacted by the collector of customs at that port on certain steel blooms imported by them, viz, a duty of 45 per cent. ad valorem, instead of 30 per cent. The case was tried and a verdict obtained against the Government for the excessive rate of duty exacted, and it was then judicially determined that the correct rate of duty on steel blooms was 30 per cent. ad valorem and not 45 per cent. This case was appealed by the Government to the United States Supreme Court, October term, 1884, No. 853, and on the 19th of January, 1885, the appeal of the Government was dismissed by the Supreme Court.

The Treasury Department after this, in February, 1885, instructed the collector of the port to collect, in conformity with this decision, only 30 per cent. ad valorem instead of what the collector had been exacting, viz, 45 per cent.

In the act of March 3, 1883, steel blooms are specifically named and a rate of 45 per cent. is stated as the rate of duty, but prior thereto the correct rate of duty was as the claimants claimed, viz, 30 per cent., and as the courts determined, and not at the rate exacted by the collector of customs and enforced by the Treasury Department.

The bill gives the Court of Claims jurisdiction of these claims, provided that the petitions are filed within six months and that the adjudication shall only be for such sums as were paid in excess of the legal duty.

In a letter from the Acting Secretary of the Treasury to the chairman of this committee, dated February 27, 1888, he states that the Treasury Department refunded to certain importers who had brought suit against the Government the difference between the rate of 45 per cent. and the rate of 30 per cent. in pursuance of the decision in the case of Downing *vs.* Robertson.

The bill now reported by this committee allows the claimants who had not been refunded the duty illegally exacted from them an opportunity to present their claims for excessive duties paid by them to the Court of Claims.

Your committee recommend the passage of the acccompanying bill, with the following amendment: In line 15, after the word "Collins," insert "and Company."

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 87.

OPENING AND SETTING ASIDE AN ORDER OF THE COURT OF CLAIMS, ETC.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Laidlaw, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3308.]

The Committee on Claims, to whom was referred the bill (H. R. 3308) to open and set aside an order of the Court of Claims, etc., beg leave to submit the following report:

That a bill was introduced into the House of Representatives of the Forty-ninth Congress embracing the same subject-matter as this bill and substantially to accomplish the same ends. That it was referred to the Committee on Claims, and by that committee reported favorably to the House with certain amendments recommended in the report, a copy of which report is hereto attached. The present bill contains the amendments recommended in said report. The present committee adopt the report of the former committee as their own, and recommend that the present bill do pass.

[House Report No. 2172, Forty-ninth Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 1533) to open and set aside an order of the Court of Claims canceling a portion of a judgment against the United States, remitted, through mistake as to the facts in regard to the same, by claimant to the United States, and to refer the matter to the Court of Claims for such further action as said court shall find to be just and equitable, having considered the same, submit the following report:

The claimant, as administrator of the estate of William Stotesbury, deceased, obtained, in 1884, a judgment in the Court of Claims against the United States for the sum of $11,301, from which judgment the United States appealed to the Supreme Court; that thereafter the claimant, through his attorney, remitted $4,933 of said judgment; whereupon the balance was paid by the United States and the appeal dismissed.

The claimant has produced evidence tending to show that he was induced to remit said sum under a mistake of fact, and that by reason of such deception he was induced to take a less sum than he was entitled to under said judgment.

The committee is of opinion that he should be permitted to make his showing in the court which rendered the judgment, and, if the facts warrant it, he should receive the amount remitted.

The committee recommend the following amendments to the bill: Strike out all of line 10 and the words "false advice" in line 11 of section 2. In lines 21, 22, and 23 of section 2 strike out the words "with interest from the time of presenting the transcript of said original judgment to the Secretary of the Treasury, pursuant to statute." Strike out the last word in line 4 and the first word in line 5 of section 3; and, when so amended, recommend that it do pass.

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51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 88.

HEIRS OF MARK DAVIS, DECEASED.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. THOMAS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 4496.]

The Committee on War Claims, to whom was referred the bill (H. R 4496) for the relief of the heirs of Mark Davis, deceased, report as follows:

The facts out of which this claim for relief arises will be found stated in House report from the Committee on War Claims of the Forty-ninth Congress, a copy of which is hereto attached for information.

The Supreme Court of the United States, in the case of Planters' Bank *vs.* Union Bank (16 Wallace, page 483), say:

> A pledge had been given that rights of property should be respected. When the city was surrendered to the army under General Butler, a proclamation was issued, dated May 1, 1862, one clause of which was as follows:
>
> All the rights of property, of whatever kind, will be held inviolate, subject only to the laws of the United States.

The court then declare that thereafter the military commander of that department had not the right "to seize private property as booty of war or to make any order, as commander, confiscating it."

Your committee report back the bill and recommend its passage.

[House Report No. 3333, Forty-ninth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 2525) for the relief of heirs of Mark Davis, deceased, having considered the same and accompanying papers, submit the following report:

The petition and proofs show that Mark Davis, now decaased, came to the United States from England at the age of twenty-three years, and, becoming a naturalized citizen, took up his residence in the city of Petersburgh, Va. For many years prior and up to about the year 1843 he was actively engaged in business as a merchant in Petersburgh and in New Orleans. About the year 1843 he retired from active business, continuing to live in Petersburgh upon the income derived from his property, which was largely invested in business real estate in the best business portion of the city of New Orleans, and up to the breaking out of the war of the rebellion furnished him an ample income. During the war his age and infirmity were such that, although residing in an insurgent State, he was not called upon to in any way render aid or comfort to the Confederacy. He did not at any time take part, directly or indirectly, in the rebellion, but was enabled to remain loyal in spirit and in act to the Government. As soon as possible after the close of the war, believing that possibly his mere residence in a hostile country during the rebellion might constitute such constructive adhesion to the Confederacy as to render a pardon necessary and proper, he applied for such pardon, and same was issued to him July 29, 1865. (Same is herewith sub-

mitted, marked Exhibit No. 1.) As further evidence of Mr. Davis's loyalty during the war, we refer to Report No. 319, House of Representatives, Forty-third Congress, first session, and to the affidavit of a number of citizens of Petersburgh, therein printed.

In 1851, Mr. Davis, by formal power of attorney, appointed Edward Barnett, of New Orleans, his attorney in fact, to take possession of and to manage and control his property in that city.

When on May 1, 1862, General Butler took possession of the city of New Orleans, he issued a proclamation in which he declared that "all the rights of property, of whatever kind, will be held inviolate, subject only to the laws of the United States." This stipulation was observed, at least so far as the property of Mr. Davis was concerned, so long as General Butler was in command of that department; but immediately that he was succeeded by General Banks a different policy seems to have been adopted. (See letter of Edward Barnett to Mark Davis, sr., November 22, 1871, Exhibit No. 2, herewith.) What then transpired is best told by the following affidavit of Edward Barnett, and the orders, receipts, etc., therein referred to, which we give here in ful], and the originals of which we submit as Exhibit No. 3:

Affidavit of Edward Barnett.

[Edward Barnett, notary public and commissioner of deeds, 18 Royal street, Merchants and Auctioneers' Exchange.]

NEW ORLEANS, *November* 22, 1871.

STATE OF LOUISIANA,
City of New Orleans:

I, Edward Barnett, of the city of New Orleans, do hereby certify and declare that as the agent and attorney in fact of Mark Davis, sr., of Petersburgh, Va., under power of attorney from him dated April 4, 1851, I was in possession of the following described improved properties, rights, and credits belonging to him in this city, viz:

First. Two stores in square bounded by St. Charles, Camp, Common, and Gravier streets, both fronting on St. Charles street, and forming the corner of Common street, valued at $60,000, and rented to Hollander and Weber at $7,500 per annum, payable monthly.

Second. Stores No. 34 and 36 Magazine street, in square bounded by Magazine, Tchoupitoulas, and Gravier streets and Natchez alley. No. 34 rented at $65 per month, No. 36 rented at $166.66⅔ per month, and valued at $55,000.

Third. Property No. 244 Tchoupitoulas street, in square bounded by Tchoupitoulas, Delard, Pearl, and Louisa streets, rented at $30 per month, valued at $5,000.

Together with the following rent-notes, cash, etc., viz:

Forty-one notes for $625 each, of H. Hollander and A. Weber, tenants of said stores, corner of St. Charles and Common streets, maturing monthly from the 1st July, 1862, to the 1st of November, 1875, the first note credited with $500, together with the lease of said stores.

Also, fourteen notes for $166.66 each, signed by Booth & Co., maturing monthly from the 30th of September, 1862, to the 31st of October, 1863, the first note credited with $75, for rent of said store No. 36 Magazine street, together with lease of same to said Booth & Co.

Also, one lease of said store No. 34 Magazine street, to H. Spiro & Co., at $65 per month in advance.

Also, lease to W. Zimmerman for premises No. 244 Tchoupitoulas street, at $30 per month.

Also, $1,085 in Confederate States notes.

Also, $275.30 in currency.

All which was seized under military orders by order marked A, and identified by me, of John W. McClure, captain and assistant quartermaster Department of the Gulf, under date of February 14, 1863, as will also appear by his receipt to me, marked B, and also identified by me, dated the 23d day of February, 1863.

That the above-described real estate only was returned to me by W. B. Armstrong, captain and assistant quartermaster, on the 31st of October, 1865, as per order dated 14th October, 1865, as appears by document marked C, also identified by me, the said Armstrong refusing to account to me for said notes, ready money, or rentals of said property, but referring me for same to the Government at Washington.

In witness whereof I hereto set my hand, at the city of New Orleans, parish of Orleans and State of Louisiana, on the 22d day of November, in the year of our Lord 1871.

EDWARD BARNETT.

Sworn to and subscribed before me this 22d day of November, A. D. 1871.
[I. R. S., 5 cents.]

A. BARNETT,
Notary Public.

A.

OFFICE OF THE CHIEF QUARTERMASTER,
DEPARTMENT OF THE GULF,
New Orleans, February 14, 1863.

SIR: You are hereby ordered to pay to Colonel Holabird or to me at this office, forthwith, all money, notes, bills, or other and all evidence of debts due to or belonging to one Mark Davis, of Virginia, now in your hands, or in any way under control.

Respectfully, yours,

JOHN W. MCCLURE,
Assistant Quartermaster.

B.

Received, New Orleans, February 23, 1863, from Edward Barnett, esq., forty-one notes, for $625 each, signed by H. Hollander and H. Weber, to mature monthly, from 1st July, 1862, until 1st November, 1865. The first note is credited with $500, paid 9th August, 1862, for rent of Mr. Davis's property, corner St. Charles and Common streets, as per lease, before E. Barnett, notary public, dated February 16, 1860.

Also, fourteen notes for $166.67, signed by Booth & Co., to mature monthly from 30th September, 1862, until 31st October, 1863. The first note is credited with $75 for rent of store, 36 Magazine street, as per lease, also received.

Also, one lease for store, No. 34 Magazine street, to H. Spiro & Co., at $65 per month in advance.

Also, lease to William Zimmerman for store 244 Tchoupitoulas street, at $30 per month.

Also, $1,085 in Confederate States notes.

Also, $275.25 in cash; balance as per account rendered this day.

The interlineation on reverse side is $275.25.

S. B. HOLABIRD,
Colonel and Chief Quartermaster.
Per J. W. MCCLURE,
Captain, A. Q. M.

C.

[Office assistant quartermaster, Bureau Refugees, Freedmen, and Abandoned Lands, State of Louisiana, No. 30 Carondelet street.]

NEW ORLEANS, *October* 14, 1865.

Mark Davis, by his agent, having this day signed the usual receipts for his property held by this Bureau under seizure by the United States Government, said property is hereby released and restored to said claimant, possession to be given on the 31st instant. Tenants and occupants will be governed accordingly.

Respectfully,

W. B. ARMSTRONG,
Captain, and Assistant Quartermaster.

Thus there is no room for question as to the fact that on February 23, 1863, the property, real estate, notes, cash, etc., described in the foregoing affidavit and receipts, being the property of a loyal non-combatant, was taken possession of by officers of the United States, and was retained by them until October 31, 1865, when the real estate only was surrendered to the agent of the owner. During that time the owner was deprived of all use and enjoyment of the property, and whatever revenues it produced were received by the Government through its officers in possession. We are able to show you with almost absolute certainty the amount of the revenues received from this property by the Government during the period it was so in possession.

(1) *The two buildings at corner of Saint Charles and Common streets.*—The buildings were leased November 1, 1860, to Hollander & Weber for a term of five years, expiring November 1, 1865, at $7,500 per annum, payable monthly. To secure the payment of the rent a series of the sixty notes of $625 each were given, one note falling due on the first of each month during the term. Hollander & Weber sublet the corner store to François Gunthier at $300 per month. They also sublet the upper portion of the two stories to one Skeggs for $300 per month. The rent notes given by Hollander & Weber were paid as they became due up to the note falling due July 1, 1862,

upon which note a payment of $500 on account was made August 9, 1862. Thus there was of this series forty-one notes, of $625 each, due and to become due, which came into the hands of the Government officer, as specified in his receipt. On taking possession of the property the Government officers notified the subtenants of Hollander & Weber to pay their rent to the officers, and also notified Hollander & Weber to attorn to them instead of to the agent of Mr. Davis. Thereafter Gunthier paid his rent, $300 monthly, to the United States officers, who held the notes which he had given to secure the rent, and after the return of the property he paid same to Barnett. Hollander & Weber paid to the officers the rent for that portion of the premises which they continued to occupy, paying therefor $75 per month. The upper portion of the building, sublet to Skeggs at $300 per month, was in August, 1863, taken possession of as a recruiting office and for other purposes, until the property was surrendered in October, 1865. It was then in such damaged condition that it required a large expenditure to make it available. The forty-one notes of Hollander & Weber surrendered by Barnett to Captain McClure were not paid. Instead of demanding payment of them the officers received directly the rents for those parts of the premises not occupied by the Government, and in October, 1865, the notes were turned over to Weber, who destroyed them. These facts are established by the affidavits of Henry Weber (Ex. No. 4), F. Hollander (Ex. No. 5), and François Gunthier (Ex. No. 6).

From this it is clear that on account of these premises the Government received—

From Hollander & Weber, $75 per month from February 1, 1863, to October 31, 1865, 33 months	$2,475
From François Gunthier, $300 per month for the same period	9,900
Total	12,375

In addition they undoubtedly received from Skeggs the rent for the upper portion of the buildings, $300 per month, from February 1, 1863, until they took possession of the same in August; but we are unable to establish that fact, Skeggs having died before his deposition could be taken. But it is certain that from August, 1863, to October 31, 1865, the Government occupied for its own use that portion of the premises, the rental value of which was fixed by the leasing to Skegg at $300 per month, for which the owner of the property was clearly entitled to remuneration, say 26 months, at $300, $7,800.

(2) *The building No. 34 Magazine street.*—The store in this building was leased to Spiro & Co. at $65 per month. Henry Spiro swears that from early in 1863 to the latter part of 1865, the period during which the Government had possession of the property, the rents were paid monthly to the military authorities. The upper portion of this building also was used by the Government for its own purposes. The entire building would readily have rented for $3,500 or $3,600 per year but for the occupation of the upper portion by the Government. When the Government surrendered the premises it cost some $1,500 to put it in repair. As to this property, see affidavits of Henry Spiro (Ex. No. 7), Bernard Dreifus (Ex. No. 8), Anthony Lafleur (Ex. No. 9), and M. Veit (Ex. No. 10).

On account of this property, therefore, the Government received—

From Spiro & Co., $65 per month from February 1, 1863, to October 31, 1865, 33 months	$2,145

(3) *The building No. 36 Magazine street.*—This was leased to Booth & Co. for a time, which expired October 31, 1863, at $166.66 per month, and monthly rent notes given. These notes were paid to Barnett, Davis's agent, up to the note which fell due September 30, 1862. Upon that note $75 was paid. The notes falling due after that date and up to October 31, 1873, were paid to the Government officers. Fourteen notes in all were so paid to the Government officers, upon the first of which was the credit of $75, making $2,258.24 so paid to them. After the expiration of the lease Booth & Co. remained in possession of the property until it was surrendered, October 31, 1865, paying the Government therefor the same monthly rent of $166.66. (See affidavits of Edward Booth, Exhibits Nos. 11 and 12.)

On this account the Government received—

From Booth & Co., on 14 notes of $166.66 each, less $75	$2,258.24
From Booth & Co., for rent from October 31, 1863, to October 31, 1865, 24 months, at $166.66	3,999.84
Total	6,258.08

(4) *The building No. 244 Tchoupitoulas street.*—By the affidavits of William Zimmerman (Ex. No. 13) and Mrs. A. Fraub (Ex. No. 14) it is shown that from February 1, 1863, to April 1, 1865, either Zimmerman himself or Mrs. Fraub, his subtenant, were [illegible]ssession, and paid rent for the premises to the Government officers. Zimmerman [illegible] first paid $30 and then $25 per month. Mrs. Fraub, holding under Zimmer-

man until April 1, 1865, paid $25. She then leased from the Government officers, and presents her lease and monthly receipts for $25 per month until August 31, 1865. So that the Government here received—

From Zimmerman and Mrs. Fraub, rent from February 1, 1863, to August 31, 1865, 31 months, at $25 per month at least $775

(5) *Cash.*—The receipt of Captain McClure admits the receipt by him from Barnett of cash, $275.25.

In further corroboration of the facts above stated, and as showing the character of the property in question, and of the tenants of Davis, who were in possession, we submit herewith the affidavits of John J. Barnett (Ex. No. 15) and of A. Barnett (Ex. No. 16).

RECAPITULATION.

The proof shows that during the time the Government was in possession of this property it received from it, in actual cash, as follows:

From the two stores, corner of St. Charles and Common streets	$12,375.00
From No. 34 Magazine street	2,145.00
From No. 36 Magazine street	6,258.08
From No. 24 Tchoupitoulas street	775.00
Cash from Barnett	275.25
Total	21,828.33

Your committee are of the opinion that the claimants are justly entitled to recover the amount of money actually received by the officers of the Government in cash and as the proceeds of the rents of the buildings seized, amounting to $21,828.33.

Your committee therefore report the accompanying bill (H. R. 2525), with the following amendment: In lines 7 and 8 strike out the words "twenty-seven thousand six hundred and fifty-eight dollars and sixty-eight cents" and insert in place thereof the following: "twenty-one thousand eight hundred and twenty-eight dollars and thirty-three cents"; and recommend that, as amended, it do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 89.

NORFOLK COUNTY FERRY COMMITTEE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Thomas, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1121.]

The Committee on War Claims, to whom was referred the bill (H. R. 1121) for the relief of the Norfolk County Ferry Committee, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, and herewith annex a copy for information.

Your committee recommend that the bill referred to them do pass

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[House Report No. 65, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the findings of the Court of Claims in the case of the Norfolk County Ferry Committee, report as follows:

That the Committee on War Claims of the Forty-eighth Congress, not being clearly and fully advised of all the facts in said case, transmitted it to the Court of Claims for a finding of facts in accordance with the provisions of the act entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March 3, 1883. Said claim has been returned to the Committee on War Claims with the following findings of facts:

[Court of Claims. December term, 1887. Congressional Case No. 61. The Norfolk County Ferry Committee v. The United States. Findings of fact and opinion filed December 19, 1887.]

The claim in the above-entitled case having been transmitted to this court by the Committee of War Claims of the House of Representatives on the 21st day of March, 1884, and the Attorney-General, by his assistant, Louis Cochrane, esq., having appeared for the defendants, and the suit having been brought to a hearing on the 14th day of December, 1887, the court, upon the evidence and after hearing Messrs. Goode and Neely for claimant and the said assistant for the United States, finds the facts as follows:

I.

Prior to the 1st day of March, 1858, the town of Portsmouth constituted a part of the county of Norfolk, in the State of Virginia, which county was legally seized and possessed of a ferry and ferry property, consisting of three steam ferry-boats, a wharf, and buildings, in the town of Portsmouth.

II.

The said ferry was run between the city of Norfolk, town of Portsmouth, and Washington Point, and was a source of revenue to the said county of Norfolk, the proceeds being dedicated to the payment of its public debt, to the support of its free schools, and the maintenance of its public roads and bridges.

III.

On the 1st day of March, 1858, the said town of Portsmouth was, by an act of the general assembly of Virginia, chartered as a city, with separate jurisdiction from the said county of Norfolk, and by an act of the 21st of March, 1858, supplemental to the former act, provision was made for the disposition of the common property of the county of Norfolk and city of Portsmouth, whereby it was provided that the ferries then plying between the said city of Norfolk and the city of Portsmouth and Washington Point, known as the Norfolk County Ferry, should continue to run as then provided by law, and should be the joint and equal property of said county of Norfolk and city of Portsmouth, and should be regulated by a committee of six, three of whom should be appointed by the court of said county and three by the council of said city.

IV.

Soon after the organization of the said city of Portsmouth, in 1858, under said charter, a committee called the Norfolk County Ferry Committee, composed of six persons, appointed jointly by the court of said county and the council of said city, as provided by law, was formed, by which said ferry was continued to be run until the 14th day of May, 1862.

V.

On the 14th day of May, 1862, the said ferry property, consisting of three steam ferry-boats, wharves, buildings, and other property incident and appurtenant to said ferry, was seized by the Quartermaster's Department of the United States for the transportation of troops, supplies, and munitions of war.

VI.

Said ferry property, being so seized, was held continuously by said Quartermaster's Department, for the use of the Government of the United States, from the said 14th day of May, 1862, until the 21st day of April, 1866, with the exception of eight days, during which it had been surrendered to its owners.

VII.

On the said 21st day of April said property was surrendered definitely and unconditionally to the said ferry company.

VIII.

During the whole of said period, to wit, from the 14th day of May, 1862, to the 21st day of April, 1866, except the said eight days, the said Quartermaster's Department, in addition to the use of said ferry for the benefit of the Government in transporting its troops, supplies, and munitions of war, used the same for transportation of civilians, their animals and freights, and charged and collected tolls and ferriages for the same.

The amount received by the Quartermaster's Department for the three years and eleven months, except as aforesaid, commencing and ending as aforesaid, beyond the current expenses and repairs on said ferry, is the sum of $42,300.

Weldon, J., delivered the opinion of the court:

The claim embraced in the petition in this proceeding was referred to this court by the Committee on War Claims of the House of Representatives, under the act of March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government." The petitioner, on the 14th day of May, 1862, was the owner and possessor of a ferry between the city of Portsmouth and the city of Norfolk, in the State of Virginia, and while it was so possessed, to wit, on said day, the Quartermaster's Department of the United States took possession of said ferry and its incident property; retained possession of the same for nearly four years, during which time it was used to transport troops, supplies, and munitions of war for the Government and the transportation of property and passengers not belonging to or connected with the Army. During the said time the officers of the Army had complete control of said ferry, and charged and collected fare from persons not connected with the Government. The claim now made by the petitioner is to recover from the United States the amount collected from the general public for the transportation of property and persons not connected as aforesaid.

It is insisted by the counsel for the Government that this court has no jurisdiction to report the facts to Congress because of the exclusion contained in the second clause of the third section of said act, which is as follows:

"Nor shall the said court have jurisdiction of any claim against the United States which is now barred by virtue of the provisions of any law of the United States."

It is contended, that for the money collected from private persons, an action could have been maintained in this court, under its general jurisdiction, for money had and received, and that the limitation of six years applies to such cause of action.

If it be true, that the claimant had a remedy in the general jurisdiction of this court, then we are prevented from entertaining jurisdiction in this proceeding, and the petition should be dismissed.

The counsel for the petitioner argues, that the act upon the part of the officers of the United States constituted in law an appropriation of property upon the part of the Government within the meaning of the first section of the *Act of July* 4, 1864 (13 Stat. L., 381), and that by the express provisions of that law, the Court of Claims was forbidden to entertain jurisdiction of a claim originating in an appropriation of property taken by the Army and Navy.

The term "appropriation" ordinarily means a taking, for the use of the persons taking the property, to be used by such persons to the exclusion of all persons, and especially the owner; but it is sought in this case to distinguish between the absolute property, and the proceeds of such property arising from the tolls paid to the Government by persons using the ferry during the occupation of the Government.

The statute of July, 1864, provides against the bringing of a suit in the Court of Claims founded upon any demand "growing out of the destruction or appropriation" of property by the Army and the Navy during the war. The collection of tolls was incident to the use and appropriation of the Government, and can not be distinguished from the property itself.

The term appropriation is of the broadest import. It includes all taking and use of property by the Army and Navy in the course of the war not authorized by contract with the Government.

The use may be permanent or temporary and it may result in the destruction or mere injury of the property.

If the right to the property—or to its use—is not obtained by valid contract with the Government, the taking or use of it is an appropriation within the meaning of the act of Congress. (*Filor's Case*, 9 Wall., U. S. R., 45.)

Upon the question of the petitioner's right to sue under the general jurisdiction of this court, it has been held:

Where a quartermaster in Memphis, during the war of the rebellion, orders a clerk to procure a building for the pay department, and the clerk, without authority, promises the owner a reasonable rent, who thereupon consents to the possession being taken by the Government, the promise does not bind the defendant, and the act does not constitute a renting; but is deemed to be military occupancy and appropriation.

"The Court of Claims has not jurisdiction of a case for the occupation of a building in Memphis by military authority during the rebellion, there being no valid lease. Such an occupancy is an appropriation of property within the meaning of the *Act of July* 4, 1864." (13 Stat. L., 381; 3 C. Cls. R., 1.)

The first section of the act of 1864 simply denies the jurisdiction of this court, without affecting otherwise the right of the petitioner. The jurisdiction thus denied was as to the general jurisdiction of the court to entertain claims and pass upon the legal rights of parties by a judicial finding in the form of a judgment.

The act under which the petition is filed is an enlargement of the jurisdiction in the finding of facts, to assist Congress in the determination of claims against the Government.

The act of July 4, 1864, does not bar the right of the claimant, under the act of March 3, 1883, to have a finding of facts, upon which to predicate an application to Congress for such redress as may seem equitable under all the circumstances to award the petitioner.

In accordance with these views we have made a finding of facts from the evidence in the case.

BY THE COURT.

A true copy. Test:
This 29th day of December, 1887.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Your committee therefore recommend the payment of the amount due the Norfolk County Ferry Committee by said Court of Claims, and report herewith the accompanying bill and recommend its passage.

[In the Court of Claims.—No. 61.—Congressional case.]

THE NORFOLK COUNTY FERRY COMMITTEE VS. THE UNITED STATES.

Petition.—Filed June 5, 1884.—J. R.

To the honorable the Judges of the Court of Claims:

The petition of the Norfolk County Ferry Committee respectfully shows to your honors:

(1) That prior to the 1st day of March, 1858, the town of Portsmouth constituted a part of the county of Norfolk, in the State of Virginia, which county was legally seized and possessed of a ferry and ferry property, consisting of three steam ferry-boats, a valuable wharf and buildings in the city of Norfolk, and a valuable wharf and buildings in the town of Portsmouth.

(2) That the said ferry was run between the city of Norfolk, town of Portsmouth, and Washington Point, and was a source of great revenue to the said county of Norfolk, whereby it was enabled to keep its roads and bridges in repair, meet its public debt, and sustain its free schools established for the benefit of the children.

(3) That on the 1st day of March, 1858, the said town of Portsmouth was, by an act of the general assembly of Virginia, chartered as a city, with separate jurisdiction from the said county of Norfolk, and by an act of the 21st of March, 1858, supplemental to the former act, provision was made for the disposition of the common property of the county of Norfolk and city of Portsmouth, whereby it was provided that the ferries which now ply between the said city of Norfolk and the city of Portsmouth and Washington Point, known as the Norfolk County Ferry, shall continue to be run as now provided by law, and shall be the joint and equal property of said county of Norfolk and city of Portsmouth, and shall be regulated by a committee of six, three of whom shall be appointed by the court of said county and three by the council of said city.

(4) That soon after the organization of the said city of Portsmouth in 1858, under said charter, a ferry committee, called the Norfolk County Ferry Committee, composed of six persons appointed jointly by the court of said county and the council of said city as provided by law, was formed, and by which the said ferry was continued to be run until the 14th day of May, 1862, when it was seized by the Quartermaster's Department of the United States for the transportation of troops, supplies, and munitions of war, and, together with the three steam ferry-boats, wharves, buildings, and property aforesaid, was held and occupied continuously by the said Quartermaster's Department for the use of the United States from the said 14th day of May, 1862, to the 21st day of April, 1866 (with the exception of eight days), when it was restored to the said ferry committee.

(5) That during the whole of the said period the said Quartermaster's Department continued to charge and collect tolls and ferriages on all civilians, their animals, vehicles, and freights, and has never accounted with the said committee, county, or city for any part of the moneys so received.

(6) That before the month of October, 1857, since which time the receipts of the said ferry can not accurately be ascertained, the receipts from the same were annually for several years about $25,000, and that during the use and occupation thereof by the said Quartermaster's Department, owing to the greatly increased travel resulting from Norfolk City being occupied as military headquarters, the great influx of population, and other causes, the receipts from all sources, exclusive of officers, soldiers, and Government transportation, were greatly increased.

(7) That they have no means of knowing what the actual revenues of said ferry amounted to during the greater part of the time it was run by the said Quartermaster's Department, but have ascertained from Theophilus H. Rogers, who was either superintendent of said ferry or toll-gatherer thereof under appointment of the said Quartermaster's Department during the whole time of said use and occupation, that he kept an accurate account of the receipts of said ferry from the 1st of April, 1864, to the 1st of January, 1865, and that the same at 2½ cents a passenger amounted to the sum of $19,383.82 for the said nine months.

(8) That from that time to the 10th day of July, 1865, when the charges were the same, he did not keep an account of the receipts of said ferry in consequence of a different mode of settlement having been adopted by the said Quartermaster's Department, but he is confident that the daily receipts for the intervening period rather exceeded than fell short of those between the 1st day of April, 1864, and the 1st day of January, 1865; that on the 10th of July, 1865, the toll on passengers was increased from 2½ to 5 cents, and from that time to the surrender of the ferry on the 21st of April, 1866, the daily recepts of said ferry reached, as the vouchers of the Quartermaster's Department will show, the sum of $110, which would give as the annual receipts the sum of $40,150.

(9) That from the sworn statement of Joseph H. Porter, who was appointed superintendent of the ferry upon its surrender on the 21st of April, 1866, it appears that

the daily receipts of said ferry from the day of its restoration have been on an average the sum of $135.64, which would give the sum of $49,508 as the annual receipts of said ferry. All of which goes to show that the receipts during the period of its occupation by the Quartermaster's Department must have been at least as much as the ordinary receipts were before the said seizure and occupation, to wit, the sum of $25,000 per annum, and would amount during said use and occupation, to wit, from the 14th of May, 1862, to the 21st of April, 1866 (except eight days), being three years and eleven months, to the aggregate sum of $97,916.

(10) That the enjoyment by the Government of the use and occupation of said ferry for the transportation of troops, supplies, and munitions of war for the period aforesaid was worth to the Government at least the expense of running said ferry, and that the county of Norfolk and city of Portsmouth are justly entitled to receive from the United States all the moneys arising from tolls upon passengers, vehicles, animals, and freights collected by said Quartermaster's Department from civilians and others than those in the employment of the Government of the United States as moneys had and received by the Government for the use and benefit of the said county of Norfolk and city of Portsmouth.

(11) That they are also entitled to receive damages for the impaired condition of said ferry and ferry property, owing to the dilapidated state they were permitted to fall into during the said use and occupation by the said Quartermaster's Department, which damages are estimated at $10,000.

(12) That an overwhelming majority of the people of said county and city were loyal to the Government and opposed to secession and disunion; that shortly after the Federal occupation, at the first State election occurring thereafter, the said county and city were reorganized as a part of the loyal State of Virginia, and have ever since been represented in the restored government of Virginia; that besides sending representatives to the Alexandria convention which abolished slavery in Virginia by constitutional amendment, and gave the assent of Virginia to the creation of West Virginia as a new State, the county of Norfolk furnished the president of that body; that the said county and city were, by the President's proclamation under acts of Congress, excepted from emancipation and other provisions applying to disloyal States and parts of States, and that from and after the 8th day of May, 1862, the said county of Norfolk and city of Portsmouth ceased to be in law and were not in fact the seat of war.

(13) Your petitioners further show that this case has been referred to this honorable court for a determination of the facts therein by the Committee on War Claims of the House of Representatives under the act of Congress approved March 3, 1883, and your petitioners pray that this honorable court will so examine this case and such report make as the facts herein may warrant, and for all other proper relief in the premises.

(14) Your petitioners further show that they have been duly appointed a ferry committee by the county of Norfolk and the city of Portsmouth; that they are residents respectively of said county and city, and that James G. Holladay, of the city of Portsmouth, has been appointed their attorney for the prosecution of this claim.

J. W. NICHOLAS.
THOMAS J. NOTTINGHAM.
JAMES T. DUKE.
C. S. SHERWOOD.
JOS. F. WEAVER.
E. C. BROOKS.

STATE OF VIRGINIA, *County of Norfolk, to wit:*

This day personally appeared before me, Alvah H. Martin, clerk of the county court of Norfolk County and *ex officio* clerk of the board of supervisors of said county, Joseph T. Duke, Thomas J. Nottingham, James W. Nicholas, E. C. Brooks, C. S. Sherwood and Joseph Weaver, the joint committee for the management of the Norfolk County ferries on the part of the city of Portsmouth and the county of Norfolk, who severally made oath in due form of law that the allegations and statements contained in the petition hereto annexed are true and correct to the best of their knowledge, information, and belief; and I do further certify that the said Joseph T. Duke, Thomas J. Nottingham, and James W. Nicholas are the members of said joint committee for the management of the Norfolk County ferries on the part of Norfolk County, they having been duly elected or appointed as such by the board of supervisors of said county, as will appear by a certified extract from the proceedings of said board hereto annexed, and have duly qualified as members of said committee.

Given under my hand and the seal of said court and of said board of supervisors this 29th day of May, 1884.

[SEAL.] ALVAH H. MARTIN,
Clerk of the County Court of Norfolk County and ex-officio Clerk of the Board of Supervisors of said county.

STATE OF VIRGINIA, *County of Norfolk, to wit:*

I, Edward Spalding, judge of the county court of said county, State aforesaid, do certify that Alvah H. Martin, who hath given the preceding certificate, is clerk of said court and *ex officio* clerk of the board of supervisors of said county, and that his said attestation is in due form.

Given under my hand this 20th day of May, A. D. 1884.

[SEAL.] EDWARD SPALDING,
Judge of the County Court of Norfolk County.

STATE OF VIRGINIA, *County of Norfolk, to wit:*

I, Alvah H. Martin, clerk of the county court of the said county of Norfolk and State of Virginia, do hereby certify that honorable Edward Spalding, whose genuine signature appears to the certificate above, is the only judge of the said county court, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, this 29th day of May, A. D. 1884.

[SEAL.] ALVAH H. MARTIN, *Clerk.*

STATE OF VIRGINIA, *County of Norfolk, to wit:*

I, Alvah, H. Martin, clerk of the board of supervisors of said county, do certify that Messrs. Joseph T. Duke, James W. Nicholas, and Thomas J. Nottingham have been duly elected by said board as members on the part of Norfolk County of the joint committee for the management of the Norfolk County and Portsmouth Ferries, and that they are now serving as such members.

Given under my hand this 29th day of May, 1884.

ALVAH H. MARTIN, *Clerk.*

At a regular meeting of the council of the city of Portsmouth, Va., held March 4, 1884, the following gentlemen were elected to represent the city of Portsmouth on the joint committee for the management of the Norfolk County Ferries: Messrs. C. S. Sherwood, Jos. F. Weaver, and E. C. Brooks.

[SEAL.] E. THOMPSON, Jr., *C. C.*

A copy.

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 90.

WILLIAM JEWELL COLLEGE, OF LIBERTY, CLAY COUNTY, MO.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. THOMAS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1574.]

The Committee on War Claims have carefully considered bill (H. R. 1574), with accompanying evidence, and beg to submit a favorable report, with the following amendment:

Strike out the words "five thousand two hundred," line 7, and insert "two thousand two hundred;" strike out the words "and damages to" line 8, and insert the word "and" after the word "use" line 8, and insert the word "of," line 8, after the word "occupation."

The bill proposes a compensation to the trustees of William Jewell College, of Liberty, Clay County, Mo., of $5,200 for the use, occupation, and damages to the college building by United States troops during the war. Following, however, in the line of well-established precedent, your committee have rejected all that part of the claim which provides for compensation to the trustees by reason of the damage to the building and restrict the relief to the rental for the use and occupation of the building. The use and occupation of the building is fully established by sworn testimony of Jesse E. Bryant, Darius Gittings, Trigg T. Allen, and other citizens of standing and reliability, as also by the testimony of the president and secretary of the board of trustees, all of which is herewith submitted and made part of this report.

To the honorable the Senate and House of Representatives of the Congress of the United States:

Your petitioner, the trustees of William Jewell College, respectfully represents:

That it is an educational corporation, duly established and organized under the constitution and laws of the State of Missouri, and in especial act under and by virtue of an act of the general assembly of the State of Missouri, approved February 27, 1849, entitled "An act to charter a college in the State of Missouri;" that the home of your petitioner is in the city of Liberty, in the county of Clay, in the State of Missouri; that on and before September 17, 1861, it was the owner and in possession of a college campus, embracing some 6 or 8 acres, situate in said city of Liberty, and of a college edifice situate on said campus, and of a large number of books and apparatus, which books and apparatus were contained in said edifice;

That said edifice had a front of about 127 feet north and south, and a depth of about 70 feet east and west; was three stories in height, and had been constructed prior to said September 17, 1861, at a cost of near $45,000, and was worth that sum at the date aforesaid;

That at said last-mentioned date petitioner's said books, constituting its library, numbered about 4,000 volumes, and was worth the sum of, perhaps, $6,000;

That petitioner's apparatus, chemical, philosophical, etc., was at said date worth the sum of $4,000;

That after the battle of Blue Mills, in said county of Clay, on said September 17, 1861, the commander of the Federal forces engaged in said battle, namely, Lieut. Col. John Scott, of the Third Iowa Volunteers, requested of petitioner the use of said edifice as a hospital for the Federal soldiers who had been wounded in said battle. Whereupon, on said day it was yielded by petitioner to said officer for said purpose, and it was so used by the Federal authorities for said purpose during the period of about five weeks next thereafter;

That the rental value of said edifice for said purpose for the period of five weeks was justly worth the sum of $1,200, and that the damage done to said edifice, books, and apparatus, by reason of such occupation, was justly the sum of $1,500;

That in the summer of 1862, and about the last of July or first of August, in said year, said campus and edifice was again occupied and used by the Federal forces for quarters and other purposes for the period of about five weeks, which occupation was under the order of Col. William R. Penick, Fifth Cavalry, Missouri State Militia, who was then under the orders of the Federal general commanding the department in which Missouri was embraced;

That the rental value of said second use was fairly worth the sum of $1,000, and the damage to said edifice, books, and apparatus, amounted to the sum of $1,500.

Wherefore your petitioner prays that the sum of $5,200 be paid petitioner as full compensation for said uses and damages, and that petitioner have all appropriate relief in the premises.

By order of the board of trustees of William Jewell College.

JOHN B. NORVALL,
President of the Board of Trustees William Jewell College.

Attest:
[SEAL.]

G. L. BLACK,
Secretary of the Board of Trustees.

STATE OF MISSOURI, *County of Clay, set:*

This affiant, Jesse E. Bryant, being first duly sworn, deposes and says: I am a citizen of Liberty, Clay County, Mo., and have resided here continuously since the 26th day of September, 1849. On and before September 17, 1861, and for many years after that date, I was a member of the board of trustees of William Jewell College—an educational corporation. the collegiate edifice of which is situate on an eminence in Liberty, Clay County, Mo. This edifice is of brick, three stories high, each story about 15 feet in height, and is about 127 feet in length, north and south, by about 70 feet in depth, east and west. On September 17, 1861, it contained a library of four or five thousand volumes, as I suppose, and apparatus, chemical, astronomical, etc., worth about $4,000. On September 17, 1861, the battle of Blue Mills was fought in Clay County, Mo., in the Missouri Bottom, about three miles east of south from Liberty, between the Federal forces, commanded by Lieut. Col. John Scott, of the Third Iowa Volunteers, U. S. Army, and certain Confederate forces, commanded by Colonel Saunders and others. The particulars can in part be ascertained from Lieutenant Colonel Scott's report of the engagement to Brig. Gen. Samuel D. Sturgis, of date September 18, 1861. After the engagement there was no house in Liberty suitable in size and construction for a hospital for the Federal wounded, except the collegiate edifice aforesaid. At the time I had in my possession the keys of the said edifice, as well as the charge of the whole building and property, under authority from said board of trustees. On the evening of the day of said battle, and after it was fought, an officer of Lieutenant Colonel Scott, said commander, and acting under his orders—whose name I can not now recall—applied to me for the use of said collegiate edifice for a hospital for the Federal soldiers of said command wounded in said battle, numbering about seventy-five or eighty, for the reason that said wounded could not otherwise be properly cared for. As requested by said officer, I unlocked the doors of the edifice, and the Federal wounded, to the number aforesaid, were placed in said edifice; its fine, pleasant situation and the largeness of its rooms offering every chance for attention to the wounded and their recovery. The use of the building for a hospital continued for about five weeks. During that time much damage was done to the edifice, books, and apparatus. I should say the rental value of said edifice for hospital uses for the said period of about five weeks was very fairly worth $1,200. My estimate of the damage done by said occupation to the building, books, and apparatus, was all of $1,500. In the summer of 1862, Col. William R. Penick, Fifth Cavalry, Missouri State Militia, but acting under the command of the Federal general commanding the de-

partment, which embraced the State of Missouri, was in command of the Federal forces at Liberty, Clay County, Mo. About the last of July, 1862, or the first of August of said year, he desired the use of said edifice and the adjoining ground—some 6 or 8 acres—for the use of the Federal forces, and accordingly entered into them with a large part of his forces, the character of the ground and the size and location of the college edifice being especially adapted to use as a camp and barracks for troops. This occupation lasted about five or six weeks. The rental value of this occupation was worth $1,000, and the damage resulting to building, books, and apparatus amounted, in my opinion, to $1,500.

JESSE E. BRYANT.

Subscribed and sworn to before me, the undersigned, a notary public within and for the county of Clay, in the State of Missouri (commissioned and qualified for a term expiring on the 12th day of January, 1891), this the 22d day of January, 1889.

In testimony whereof, I, the said notary, have hereto set my hand and affixed my notarial seal, at office in said county of Clay, this January 22, 1889.

[SEAL.] D. C. ALLEN,
Notary Public.

We, the undersigned, citizens of Liberty, Clay County, Mo., state that we were citizens of Liberty during the years 1861, 1862, and following; that we have read the foregoing affidavit made by Jesse E. Bryant; that we were personally cognizant of the occupations of the collegiate edifice and grounds stated in said affidavit; that Mr. Bryant is a citizen fully entitled to credence; and in our opinion his estimates of the damages shown in said affidavit are just and correct.

Witness our hands this January 22, 1889.

DARIUS GITTINGS.
TRIGG T. ALLEN.
WM. A. MORTON.
A. LIGHTBURNE.
O. F. DOUGHERTY.
WM. G. GARTH.
B. R. MITCHELL, M. D.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 91.

CERTAIN OFFICERS AND ENLISTED MEN OF THE ARMY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Thomas, from the Committee on War Claims, submitted the following

REPORT:

[To accompany the bill H. R. 943.]

The Committee on War Claims, to whom was referred the bill (H. R. 943) for the relief of certain officers and enlisted men of the Army for services actually performed during the rebellion, submit the following report:

The correction of the muster-rolls of the volunteer forces during the late rebellion has been a subject which has come before Congress very many times during the last decade, and has resulted in the enactment of several statutes; all, however, being so restricted by provisos as to afford relief to only a part of the meritorious cases.

Hundreds of private bills and petitions have been passed, involving an enormous expense for printing and clerical work.

Some of the general remedial statutes have related to one subject, some to another; some include one class and exclude others; some measures have related to the Army and some to the Navy, and none have been sufficient to accomplish the end desired by Congress, or to afford the relief to which meritorious claimants are entitled.

By the act of Congress approved July 29, 1861, entitled "An act to provide for the suppression of the rebellion," etc., it is provided in section 3:

> That the militia so called into service of the United States should be subject to the same rules and articles of war as the troops of the United States.

The men who responded to the calls for volunteers had little or no knowledge of army regulations, and cared less for the Rules and Articles of War. They enlisted to perform what they considered a duty to their country, and it made little difference to them whether their commands were below the minimum or whether their muster was regular. In fact, hundreds of them did not await the convenience of mustering officers to come out to the front and muster them into the service in accordance with military regulations, but, being fully armed with patriotism, plunged into the struggle, and many got killed or captured without, in the eye of the War Department, ever having been in the military service of the United States at all.

This appears to be an anomalous condition of affairs—one hardly understood by a mind not educated to the "Articles of War."

To clearly show that the laws now in force are inadequate to afford relief to deserving claimants, your committee cite a few cases.

In the case of Benjamin R. Waller, the Adjutant-General reports:

Benjamin R. Waller was commissioned second lieutenant Company G, Twentieth Kentucky Infantry Volunteers, August 23, 1863, to fill a vacancy created by the promotion of Francis C. Steinberger to first lieutenant May 15, 1863, but said company was below the minimum number to September 1, 1864.

In 1884 Mr. Waller, by his attorney, presented to the Department for consideration under the provisions of the act approved June 3, 1884, an application for recognition as second lieutenant Company G, Twentieth Kentucky Volunteers, from August 23, 1863, to September 1, 1864.

This application was rejected, for the reason that his company was below the minimum number during the period claimed.

Although the records show that Mr. Waller rendered service and was recognized as a second lieutenant from date of his commission as of that grade to date of his muster as a first lieutenant, July 4, 1864, any relief to which he is equitably entitled can only be afforded by special legislation.

In case of Thomas Miller, Mr. Hampton, from Committee on Military Affairs of the Senate, reports (Senate Report 271, first session Forty-eighth Congress):

That it appears from evidence submitted that Thomas Miller was recruited by Nelson McLaughlin, captain of Company M, Eighth Tennessee Cavalry, August 27, 1863, and served as a private until October 19, when leave of absence was granted to him. On his return to his command he was killed by the enemy, in November, 1863. As he had not been regularly mustered into the service his name does not appear on the muster-rolls, but the evidence shows that he had enlisted, and that he was killed while in the service.

In view of these facts the committee report the bill back to the Senate and recommend its passage.

A very extreme case is that of Alexander Francesco, concerning whom the Adjutant-General reports:

There is no record of the enrollment, muster-in, or service of Alexander Francesco in the military service of the United States as a Kentucky volunteer, and his name is not borne on any rolls or records of Company D, Forty-fifth Kentucky Volunteers, on file in this office, but records of prisoners of war show that A. Francisco, private, Company D, Forty-fifth Kentucky Infantry, was captured at Magoffin, Ky., December 1, 1863; confined at Richmond, Va., December 8, 1863; admitted to hospital No. 21, Richmond, Va., February 15, 1864; and died in that hospital February 25, 1864, of chronic diarrhea.

The following is a synopsis of evidence presented to this office since 1869 with a view to an amendment of records to show the enrollment, muster-in, and service of Francesco.

John F. Sebastian, late private Company D, testified that he was acquainted with Alexander Francesco, who was a private in said company and regiment; that they were both captured at Salyersville, Ky., November 30, 1863, and taken to Richmond, Va.; that in a few weeks Francesco was supposed to have the small-pox, and was taken from prison to hospital.

[NOTE.—Records show affiant to be a competent witness.]

W. S. Adams, late captain Company D, Forty-fifth Kentucky Volunteers, testified that he recruited Francesco in October, 1863, but before there was an opportunity to have him mustered in he was captured by the enemy; that as Francesco had not been mustered in he did not deem it necessary to put his name on the rolls of the company.

In view of this evidence, this office, on January 22, 1880, placed the name of Alexander Francesco on muster-rolls of Company D, Forty-fifth Kentucky Volunteers, and noted opposite thereto the record of his capture and death, and also that there was no record of his enlistment, muster-in, or service.

On October 28, 1881, this office decided in this case that "the enlistment of a soldier can only be established from the original enlistment paper or muster-in roll; that parol evidence is not accepted to establish enlistment or service," and this decision was, on appeal, sustained by the Secretary of War under date of December 12, 1881.

It will be observed that the War Department not only refuses muster to a soldier who was captured by the enemy, and who afterwards died in a prison at Richmond, Va., but also decides "that parol evidence is

not accepted to establish enlistment or service," hence the necessity for some general legislation becomes apparent.

Cases of equal merit to those cited are constantly being brought before Congress, because, in the language of the Adjutant-General, the War Department is "powerless to grant relief."

If the laws now in force are so very defective as to render the Secretary of War "powerless to afford relief," then the occasion cries aloud for a sufficient remedy.

The principle involved in these cases is not a new one, but has been many, many times passed upon, and received the approval of Congress.

The temper of the House may be disclosed from the following extracts from the Record of January 25, 1888:

JOHN BURKHART.

Mr. HOLMAN. I ask unanimous consent to take from the Private Calender for present consideration a bill which passed both houses of Congress at the last session, but failed to reach the President in time for his approval, and which has been again reported favorably by the Committee on War Claims at the present session.

Mr. REED. Is this a private claim?

Mr. HOLMAN. It is a bill proposing to pay a gallant officer two or three hundred dollars for service rendered by him for which he has never received pay. The bill, as I have stated, passed both houses at the last session, but failed to reach the President.

Mr. REED. This is one of the claims which the United States Government owes?

Mr. HOLMAN. Yes, sir; one which ought to have been paid long since.

The bill was read.

* * * * * * *

Mr. STEELE. I shall have to object to the consideration of this bill unless we be allowed to offer an amendment providing similar relief in the cases of all other persons who performed services of the same character on commissions issued in violation of law. This officer, it appears, was commissioned in violation of the statute of March 7, 1863, and in violation of General Order 183, War Department, June 30, 1863. Now, if an amendment be allowed providing that all officers or acting officers who performed similar services under similar conditions shall be paid, then I shall not object to the bill.

Mr. HOLMAN. My colleague [Mr. STEELE] is the last gentleman I should expect to raise objection to the passage of a bill of this kind. This bill passed the House last session by unanimous consent, and was also passed by the Senate, but failed to reach the President in time for his approval. The amount involved is only $300 or $400, I think. This gallant soldier was not paid for services which he actually rendered. I hope my colleague will not throw any obstacle in the way of so meritorious a measure.

Mr. STEELE. In order that I may secure the co-operation of my eminent colleague in favor of a general law covering cases of this kind, I shall have to object to this bill.

* * * * * * *

Mr. HOLMAN. I do not think my colleague really intends to object to a bill of this kind, involving the just demands of a soldier.

Mr. STEELE. The necessity for this bill can only arise from the want of a general law on the subject, the passage of which I desire to secure.

Mr. HOLMAN. I will co-operate with my colleague in favor of such a general law if one can be made applicable, or any other just measure in the interest of the Union soldiers. I have uniformly supported all such measures.

And subsequently the bill was passed.

Your committee are of the opinion that *service* should carry with it a right to *pay*, and that no technical rule of the War Department should be allowed to stand in the way.

The Government of the United States can not afford to accept a volunteer soldier's services and then deny him his wages, neither should the absence of a regular muster be permitted to defeat an old mother's or a widow's pension.

The whole question of correcting the rolls of the volunteer forces should be relegated to the War Department. It is with a view to conferring upon the Secretary of War ample authority in the premises that the accompanying bill has been drawn.

It is believed that this bill will be sufficient to afford relief to all meritorious cases, and relieve Congress of a vast amount of unnecessary labor, and therefore your committee report back the bill with favorable recommendation.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 92.

BOUNTIES TO VETERAN VOLUNTEERS.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. THOMAS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 946.]

The Committee on War Claims, to whom was referred the bill (H. R. 946) directing the payment of bounties to veteran volunteers who were promoted after re-enlistment, report as follows:

It is believed that this bill will be sufficient to afford relief to all meritorious cases and relieve Congress of a vast amount of unnecessary labor, and therefore your committee report back the bill and recommend its passage, appending hereto and making part of this report the following letter:

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
Washington, D. C., December 16, 1887.

SIR: I am in receipt of your favor of the 14th instant, containing the following interrogatories in relation to veteran bounty under General Orders No. 191, series of 1863:

(1) Has the Treasury Department ruled that unaccrued installments of said bounty should be withheld from men who were promoted after enlistment?

(2) Was such ruling made in pursuance of law? If not, upon what authority was it made and what is the full meaning of it?

(3) Does the Department still adhere to such ruling?

By the general order to which you refer the War Department offered a bounty of $400 to every volunteer enlisted and mustered into service as a veteran within ninety days, said bounty to be paid as follows:

Installment.	Service.	Amount.
First	On muster into service	$25.00
Second	On first pay day, or two months after muster in	50.00
Third	After six months' service	50.00
Fourth	After twelve months' service	50.00
Fifth	After eighteen months' service	50.00
Sixth	After two years' service	50.00
Seventh	After thirty months' service	50.00
Eighth	At the expiration of three years' service	75.00
	Total	400.00

Paragraph IV of the order directed that "if the Government shall not require these troops for the full period of three years, and they shall be mustered honorably out of service before the expiration of their term of enlistment, they shall receive upon being mustered out the whole amount of bounty remaining unpaid the same as if the full term had been served."

In practice this paragraph has been construed as referring only to those men who were mustered out by reason of their services being no longer required, in consequence of the close of the war. A soldier discharged for promotion was not considered to

have been discharged in such a manner as to sever his connection with the military service, and he was allowed only such installments of bounty as he had earned under his contract of enlistment.

Replying categorically to your questions, I have the honor to say:

(1) It has been repeatedly ruled by the Second Comptroller that unaccrued installments of veteran bounty shall be withheld from men who were promoted after enlistment. Section 296 Comptroller's Digest of 1869 reads as follows:

"In the case of an enlisted man entitled to the veteran bounty, but who is discharged before the expiration of the term of his enlistment by reason of promotion, he is entitled to the installments of bounty matured and become payable before the date of his discharge, less $25, by law required to be refunded." The law referred to will be found in section 6, act March 3, 1883 (12 Stat., 743); but it is not embraced in the Revised Statutes (see section 280). On April 3, 1878, and again on December 31, 1879, the above ruling was affirmed, as will be seen by section 183, Comptroller's Digest, vol. 2, which reads as follows: "A soldier who re-enlisted as a veteran under the provisions of General Orders No. 191, Adjutant-General's Office, of 1863, and was subsequently discharged for promotion, is not entitled to any installment of veteran bounty that had not become due at the date of his discharge."

(2) The ruling was not in pursuance of any act or resolution of Congress, there being no law, so far as I am informed, declaring that veterans discharged for promotion shall not receive unmatured installments of bounty.

The authority to rule upon any matter over which they have jurisdiction is conferred upon the accounting officers by the statutes creating their offices and defining their duties (see sections 191, 273, and 277, Revised Statutes). The full meaning of the ruling is, I think, explained by the decisions herein quoted.

(3(The ruling is still in force.

Respectfully, yours,

WM. A. DAY,
Auditor.

Hon. O. B. THOMAS,
House of Representatives.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 93.

HEIRS OF DAVID B. SANDERS, DECEASED.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Stone of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2950.]

The Committee on War Claims, to whom was referred the bill (H. R. 2950) for the relief of the heirs of David B. Sanders, deceased, report as follows:

This is a claim for quartermaster's stores furnished the Army of the United States during the late war. Claim stated at $5,000.

Claimant filed his claim in the office of the Quartermaster-General for adjudication under the act of July 4, 1864. The claim was given to Special Agent J. C. Dougherty for examination and report; and on December 26, 1874, he reported to the Quartermaster-General that the decedent's loyalty was established, and recommended payment for the following stores:

For 40 tons of hay, at $15	$600.00
For 2 tons of Hungarian grass, at $15	30.00
For 2,500 binds fodder	37.50
For 600 cords of wood, at $2.50	1,500.00
For 8,000 feet of lumber, at $20	160.00
For 55,000 feet of lumber, at $10	550,00
For 6,000 brick, at $8	480.00
Amounting to	3,357.50

Col. James A. Ekin, deputy quartermaster-general, transmitted the claim to the Quartermaster-General with a recommendation that the claim be suspended; and no action has been taken on said claim.

Your committee are satisfied that the claimant was a loyal citizen, and that stores of the value of $3,357.50 were taken and used by the Army of the United States, and report back the bill and recommend its passage with the following amendment:

Strike out the word "heirs" wherever it occurs in the bill and insert in lieu thereof the word "estate."

O

[illegible] the Committee on [illegible], [illegible] the following

REPORT

[illegible] H. R. [illegible]

The Committee on [illegible], to whom was referred the bill H. R. [illegible] [illegible] John [illegible], [illegible] report the same [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 95.

J. L. CAIN AND OTHERS.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2990.]

The Committee on War Claims, to whom was referred the bill (H. R. 2990) for the relief of J. L. Cain and others, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[House Report No. 2490, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (S. 97) for the relief of J. L. Cain and others, report as follows:

The committee find the facts of this case fully and accurately stated in Senate report from the Committee on Claims of the present Congress, which report is hereto annexed and made a part of this report.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[Senate Report No. 778, Fiftieth Congress, first session.]

The committee, to whom was referred the bill (S. 97) for the relief of James L. Cain, A. A. Kyle, Alexander Kennedy, and W. C. Hazen, surviving partners of G. M. Hazen & Son, have carefully investigated the facts bearing upon the relief asked by said bill, and find that the Committee on War Claims of the House of Representatives of the Forty-ninth Congress referred these several claims to the Court of Claims under the provisions of the act approved March 3, 1883.

The following are the facts found by the record of the Court of Claims, as shown by certificate of their findings certified on the 25th of November, 1887:

[Court of Claims. Congressional Case, No. 358. James L. Cain, A. A. Kyle, Alexander Kennedy, and W. C. Hazen, surviving partner of G. M. Hazen & Son, *vs.* The United States.]

FINDINGS OF FACT.

At a Court of Claims held in the city of Washington on the 16th day of May, 1887, the court filed the following findings of fact, to wit:

This case, referred to the court by the Committee on War Claims of the House of Representatives March 4, 1885, was submitted on briefs and arguments by J. F. Ken-

[illegible] Assistant Attorney-General and [illegible] of the Department of Justice, for the defendants, and the court being duly advised in the premises, [illegible]

I.

The claimants were residents and citizens of Tennessee and throughout the war of the rebellion were [illegible] the government of the United States and did not give any aid or comfort to the rebellion.

II.

About the 1st of September 1863, Knoxville was occupied by United States forces under the command of Major-General A. E. Burnside.

In November [illegible] a Confederate army, under the command of General Longstreet, was [illegible] Knoxville.

A large amount of military stores had in the meantime been deposited there, but no sufficient fortifications had as yet been constructed.

III.

In this emergency the following cotton belonging to the several claimants, with cotton of other parties in the city of Knoxville, was purchased or taken and used under the direction of the engineer officers of the Army:

Six bales of [illegible] belonging to said J. L. Cain.

Seventy-[illegible] of 5,000 pounds belonging to said A. A. Kyle.

Thirty-[illegible] bales of 17,000 pounds belonging to said George Harem.

Ten bales of 4,500 pounds belonging to said Alexander Kennedy.

IV.

The cotton so taken was effectively used for the defense of the city.

After the retreat of the enemy, the claimants applied to General Schofield, who had succeeded General Burnside in command, for the return of their cotton. But instead of returning it it was disposed of, as appears in Finding V, under the following order:

[Special Orders, No. 57.]

HEADQUARTERS DEPARTMENT OF THE OHIO,
Knoxville, *February* 26, 1864.

* * * The chief quartermaster of this department will proceed to collect all cotton that has been used in the construction of fortifications and for other purposes in the vicinity of Knoxville not actually necessary for the public service, and ship the same to Louisville, to be turned over to the chief quartermaster, there to be disposed of for the benefit of the Government according to existing regulations.

He will also take the necessary steps to ascertain the parties to whom such cotton may have belonged, the amount taken from each party, their loyalty, and give the proper vouchers therefor, according to the loyalty of each.

Brigadier-General Tillson will render such assistance as may be in his power to the quartermaster to enable him to carry out this order.

By command of Major-General Schofield.

HENRY CUSTISS,
A. A. G.

V.

The cotton was taken by General Burnside November 25, 1863, but the order of General Schofield to gather up from the fortifications was not issued until February 26, 1864. Nearly four months elapsed from the first taking before this order was fully executed. The waste in the mean while was found to be large. Of the 313 bales originally taken from all the citizens only 218 bales were saved. What became of the 95 bales of deficiency does not definitely appear. Some have been taken by the soldiers to fill their bunks; some used to calk pontoons; some lost by pillages, and much worn out and used up in the works.

Of the 218 bales recovered, 40 were used by the medical department, 158 stored by the quartermaster near the railroad depot awaiting shipment were accidentally set

on fire by boys playing in its vicinity and all, with the exception of about 20 bales, consumed. Twenty bales were shipped to the chief quartermaster at Louisville. What became of the other 20 bales does not appear.

Nor does it appear from which one of the citizens the cotton lost, burned, sold, or used had been originally taken.

VI.

Said cotton so taken, or furnished, from the claimants was never returned to them, nor have they received any compensation therefor. The market value of the cotton at time and place was 75 cents a pound, amounting to the several parties as follows:

J. L. Cain	$1,701.75
W. C. Hazen, surviving partner of G. M. Hazen & Son	12,975.00
A. A. Kyle	2,625.00
Alexander Kennedy	3,375.00

BY THE COURT.

A true copy.
Test, this 25th day of November, A. D. 1887.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

The findings of fact clearly show that the claimants were loyal to the Government of the United States during the entire war; that the property taken from them by General Burnside in order to meet the emergency which arose by reason of the advance of General Longstreet's army, was intended by the commanding general to be compensated for, as is shown by the second clause of Special Orders, No. 57, in which he says: "He will also take the necessary steps to ascertain the parties to whom such cotton may have belonged, the amount taken from each party, their loyalty, and give the proper vouchers therefor according to the loyalty of each."

After the emergency had passed that induced the general commanding to seize and use this cotton, the claimants applied to General Schofield to return the same to them, instead of doing which he ordered it to be taken to Louisville to be turned over to the quartermaster-general, to be disposed of for the benefit of the Government.

Your committee, under these circumstances, can see no just reason why the action of the agents of the Government, under the facts found by the Court of Claims, should not impose upon the United States the obligation to pay to the claimants the value of the property taken by the Government from them.

Your committee would therefore recommend that the bill be amended in line 10, after the words "to wit," by striking out "I." and inserting "J.," and in line 22, by striking out "seven" and inserting "five," and in line 23, by striking out all after the word "dollars," and that the title be amended so as to read "For the relief of J. L. Cain and others," and as so amended the bill is reported favorably, with the recommendation that it do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 96.

ALLARD & CROZIER.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Stone, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2886.]

The Committee on War Claims, to whom was referred the bill (H. R. 2886) for the relief of Allard & Crozier, report as follows:

This claim is for 200 barrels of flour taken from Allard & Crozier, of Paducah, Ky., on the 6th day of September, 1861, by order of General E. A. Payne, commanding United States troops at that point.

General Newsham, in reply to a letter of inquiry from General A. B. Eaton, Commissary-General, under date of September 4, 1874, says:

> The flour, amounting to 360 barrels, and all other property in the depot was turned over in my presence by order of General Payne to William G. Pinckard, lieutenant and acting assistant quartermaster, for use of the troops. The said flour belonged to Mr. Slack and to Allard & Crozier, of Paducah. Mr. Slack claimed 160 barrels and Messrs. Allard & Crozier 200 barrels. I may have given these gentlemen receipts for the above within a day or two or so after the capture of Paducah, but at this length of time I can not be certain. The flour was not paid for, but was issued by Lieutenant Pinckard to the troops. If the flour so taken by us at that time has not been paid for by your department, I would consider a claim at fair rates per barrel as eminently just and proper, for the said flour was used for the Army.

The loyalty of claimants at the date of the taking of the flour and ever since is clearly established beyond controversy.

Claimants filed their claim in the office of the Commissary-General, and that officer rejected the claim for the reason that he was not satisfied as to the loyalty of the claimants.

The officer who took the flour vouches for the loyalty of the claimants. The collector of internal revenue at Paducah, Ky., under date of April 28, 1873, in a letter to the Commissary-General, says that the claimants were loyal during the war.

The flour was worth at the time it was taken $7.50 per barrel, amounting to $1,500.

Your committee, in view of the foregoing statement of facts, report back the bill and recommend its passage.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 97.

SAMUEL FELS.

February 15, 1890—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Stone, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2876.]

The Committee on War Claims, to whom was referred the bill (H. R. 2876) for the relief of Samuel Fels, report as follows:

That the proof in this case shows that the claimant purchased five hogsheads of tobacco from John E. Woodward, as sold by him under military orders of General E. A. Paine, then commanding the Western District of Kentucky, and paid said Woodward therefor $2,333.62; that on February 20, 1865, E. A. Lindsay, by his suit against Mr. Fels in the Jefferson County circuit court of Kentucky, established his right to said tobacco as the owner thereof at the time it was seized and sold by order of General Paine. The court decided that the orders of General Paine, in seizing and selling said tobacco, were illegal, and that no title passed to Mr. Fels; and the claimant was forced to and did pay the owner of said tobacco, E. A. Lindsay, its value, being $2,504.85.

Your committee are of opinion that Mr. Fels bought (and paid for) said tobacco, in good faith, from the military authorities of the United States without notice of said Lindsay's ownership thereof or claim thereto, and that he should be re imbursed for the amount he paid for it.

Your committee report back the bill and recommend its passage.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 98.

LEGAL REPRESENTATIVES OF PETER LYLE, DECEASED.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Stone, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2456.]

The Committee on War Claims, to whom was referred the bill (H. R. 2456) for the relief of the legal representatives of Peter Lyle, deceased, report as follows:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Pensions of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

Senate Report No. 562, Fiftieth Congress, first session.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1888.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill S. 1353.]

The Committee on Pensions, to whom was referred the bill (S. 1353) for the relief of the legal representatives of Peter Lyle, have examined the same and report:

Your committee reported this bill favorably during the Forty-ninth Congress, and, after a reconsideration of the case, adopt their said former report, as follows, with the recommendation that the bill do pass:

Peter Lyle was mustered as a colonel of the Ninetieth Regiment Pennsylvania Volunteers March 10, 1862, and was discharged November 26, 1864. He had previously served as colonel of the Nineteenth Pennsylvania Volunteers from April 27, 1861, to August 9, 1861. He applied for a pension to the Department, which was allowed at the rate of $30 per month from December 31, 1878, and subsequently, on the 16th of July, 1879, his application for arrears was granted from the date of discharge, and a certificate was issued on that date. The soldier died the next day, July 17, 1879, before the money was paid over, but left no widow or minor child surviving, and the administrator of the estate made claim to the amount of pension represented by said certificate. This claim was denied by the Department. An appeal was taken to the Secretary of the Interior, but the decision refusing payment was affirmed in the following terms:

DEPARTMENT OF THE INTERIOR,
Washington, May 10, 1880.

SIR: Herewith are returned the papers which accompanied your report of the 5th instant, upon the appeal of Mr. Silas W. Petit, of Philadelphia, as attorney for Vincent P. Donnelly, from the refusal of your office to pay to the latter as administrator of Peter Lyle, late colonel Ninetieth Pennsylvania Volunteers, the arrears of the pension of said Lyle, under the acts of January 25 and March 3, 1879.

The facts of the case are fully set forth in the appeal and in your report thereon.

It appears that Colonel Lyle filed an application for the arrears of pension, which was allowed, and on the 22d of July, 1879, a certificate therefor, dated the 16th of July, was issued by your office.

The pensioner died without payment to him of the arrears of pension, on the 17th of July, 1879, leaving, as stated in the appeal, neither widow nor child.

The second section of the act, granting the arrears of pension, authorizes and directs the Commissioner of Pensions to adopt such rules and regulations as will be necessary to cause such arrears to be paid to the pensioner, or, if he shall have died, to the person or persons entitled thereto. There is nothing in this act, nor in the act making appropriations for the payment of the arrears (approved March 3, 1879, vol. 20, ch. 187), to indicate who, in the case of the death of the pensioner, is the person entitled to receive the arrears, and it has been the practice of your office to subject such payments to the limitations contained in section 4718, Revised Statutes.

It is urged in the appeal (1) that section 4718 has no bearing upon the present case, but that its letter and its intent apply only to the pension accruing from the date of its last payment to the date of the death of the pensioner, and not to arrears of pension allowed to the pensioner during his lifetime but remaining unpaid at the time

of his death; and (2) that such arrears are a debt of the United States to the pensioner, and as such payable to his administrator in like manner as other debts are.

Section 4718 provides that "if any pensioner has died or shall hereafter die, or if any person entitled to a pension having an application therefor pending has died or shall hereafter die, his widow, or if there be no widow, the child or children of such person under the age of sixteen years shall be entitled to receive the accrued pension to the date of the death of such person. Such accrued pension shall not be considered as a part of the assets of the estate of deceased, nor liable to be applied to the payment of said estate in any case whatever, but shall inure to the sole and exclusive benefit of the widow or children, and if no widow or child survive, no payment whatsoever of the accrued pension shall be made or allowed, except so much as may be necessary to re-imburse the person who bore the expenses of the last sickness and burial of the decedent, in cases where he did not leave sufficient assets to meet such expenses."

The language of this section does not warrant the restrictive construction placed upon it by the appellant. It provides not only for the distribution of any amount of accrued pension which may be due to a pensioner from the date to which he was last paid to the date of his death, but it also prescribes to whom and under what circumstances payment shall be made of any amount of accrued pension which may be found to be due to a person who, having applied therefor, has died before his right to pension has been determined.

In all the legislation by Congress upon the subject of the payment of pensions found to be due to persons whose death occurred before establishing their right to pension or receiving any payment of the same, the amount of such pension is termed "accrued" pension (see section 6, act of June 6, 1866; section 4, act of July 25, 1866; section 9, act of July 27, 1868, and section 25, act of March 3, 1873, now section 4718, Revised Statutes), while in section 7 of the act of July 27, 1868, the amount of pension due to persons whose names were then upon the pension roll, and who were entitled to the benefits of the sixth section of that act, is called "arrears" of pension, from which it is clear that it was not the intention in these enactments that a distinction should be observed between the terms "accrued pension" and "arrears of pension," as is claimed in the appeal.

It was evidently intended that the two classes of persons named in section 4718 "pensioner" * * * "and any person entitled to a pension having an application therefor pending," should include all persons having any right to the benefits of the pension laws. No other class is known to the law, and none other has been recognized by the Department in its execution.

In respect of the arrears of pension, or accrued pension, Colonel Lyle, at the date of his death, belonged to one or the other of the classes mentioned, it does not matter to which one, the more properly as the section applies with equal force to both, and any amount of pension money due to him at the date of his death can be paid only in accordance with the provisions and limitations of section 4718 of the Revised Statutes.

The refusal of your office to pay the arrears of pension to the administrator of Colonel Lyle is affirmed.

Very respectfully,

C. SCHURZ,
Secretary.

The COMMISSIONER OF PENSIONS.

Upon this conclusion the case was duly certified to the Court of Claims, and the decision of the Secretary of the Interior was approved.

The opinion of the court is as follows:

[Court of Claims, No. 12676.]

VINCENT P. DONELLY, ADMINISTRATOR OF THE ESTATE OF PETER LYLE, DECEASED, *v.* THE UNITED STATES.

On demurrer.

RICHARDSON, *J.*, delivered the opinion of the court:

This case comes to issue on demurrer by the defendants to the petition of the claimant.

The alleged facts are these: Peter Lyle had been colonel of the Ninetieth Regiment of Pennsylvania Volunteer Infantry during the war of the rebellion, and was in receipt of a pension which commenced from the date of his filing the last evidence necessary to establish his claim before the Commissioner of Pensions, in accordance with the provisions of the statutes previous to January 25, 1879.

On that day Congress passed an act, the first section of which is as follows:

[SECTION 1.] That all pensions which have been granted under the general laws regulating pensions, or may hereafter be granted, in consequence of death from a cause which originated in the United States service during the continuance of the late war of the rebellion, or in consequence of wounds, injuries, or disease received or contracted in said service during said war of the rebellion, shall commence from the date of the death or discharge from said service of the person on whose account the claim has been or shall hereafter be granted, or from the termination of the right of the party having prior title to such pension:

Provided, The rate of pension for the intervening time for which arrears of pension are hereby granted shall be the same per month for which the pension was originally granted. [Act of January 25, 1879, ch. 23, Supplement to R. S., p. 395.]

This act was amended by the act of March 3, 1879, ch. 187, § 2, Supplement to R. S., p. 468; but the amendment is not material in this case.

The claimant's intestate thereafter applied for the benefit of the provisions of that act.

On the 16th July, 1879, his application was allowed by the Secretary of the Interior, and a certificate thereof was issued in the following form:

[Acts of January 25 and March 3, 1879.]

No. 157237. Invalid.

THE UNITED STATES OF AMERICA,
Department of the Interior, Pension Bureau.

ARREARS OF PENSIONS.

It is hereby certified that in conformity with the acts of Congress approved January 25 and March 3, 1879, Peter Lyle, a pensioner, on the rolls of the Philadelphia agency, as an invalid, and whose certificate is numbered 157237, is entitled to arrears of pensions, at the rate of $15 per month, commencing November 27, 1864, and $22 per month from November 27, 1869, and $30 per month from November 27, 1874, and ending December 30, 1878. Any payment made covering any portion of the time herein mentioned to be deducted unless otherwise directed.

Given at the Department of the Interior, this sixteenth day of July, one thousand eight hundred and seventy-nine.

A. BELL,
Acting Secretary of Interior.

Indorsed and countersigned.

O. P. G. CLARKE,
Acting Commissioner of Pensions.

$3,724.

Said Lyle died July 17, 1879, the day next following this allowance, unmarried and without issue, and the claimant, Donelly, was subsequently duly appointed administrator of his estate. Demand was made by the administrator for the payment to him of the amount of the allowance, but, after consideration, was refused by the Commissioner, and on appeal the decision of the Commissioner was approved by the Secretary of the Interior.

The only question of law involved in the case is whether or not this allowance *ipso facto* creates a debt against the United States, for the recovery of which an action survives to the administrator of the deceased.

The allowance is a pension, of which the certificate of the Secretary of the Interior is sufficient evidence in the absence of fraud or mistake.

A pension is a periodical allowance of money to a person, in the nature partly of a gratuity and partly of payment for past benefits conferred; payment because it is supposed to be in consideration of previous services rendered to the Government or the public, for which the compensation before made, if any, was inadequate in proportion to the benefits received and the ability of the nation in its prosperity to pay; a gratuity because it is not ordinarily founded on contract, and in such case can not be demanded as a legal right until the Government has acknowledged its moral obligation and made the grant. As it is purely voluntary, its payment must be made and accepted in exact conformity with the terms of the grant, and must be subject to all the limitations, conditions, and exceptions therein contained.

It becomes necessary, therefore, to examine the pension laws, in order to ascertain the terms on which this pension was granted.

The act of July 27, 1868, ch. 264, § 9 (17 Stat. L., 236), amending an earlier act, provided that if any person entitled to a pension died after March 4, 1861, while an application for such pension was pending, leaving no widow and no child under sixteen years of age, his or her heirs or legal representatives should be entitled to receive the accrued pension to which the applicant would have been entitled had the certificate issued before his death. Had this provision remained in force it might well be argued that when a pensioner died after the issue of his certificate and before drawing the money, leaving no widow and no child under sixteen years of age, the right to recover the amount survived to his legal representatives, in like manner as when he died before the issue of the certificate.

But that act is no longer in force. On the 3d of March, 1873, Congress passed "An act to revise, consolidate, and amend the laws relating to pensions," the twenty-fifth section of which made altogether different provisions on the subject and established a new policy as to the disposition of money due pensioners at the time of their deaths. As incorporated into the Revised Statutes those provisions are as follows:

"SEC. 4718. If any pensioner has died or shall hereafter die, or if any person entitled to a pension, having an application therefor pending, has died or shall hereafter die, his widow, or if there is no widow the child or children of such person under the age of sixteen years, shall be entitled to receive the accrued pension to the date of the death of such person. Such accrued pension shall not be considered as a part of the assets of the estate of deceased, nor liable to be applied to the payment of the debts of said estate in any case whatever, but shall inure to the sole and exclusive benefit of the widow or children; and if no widow or child survive no payment whatsoever of the accrued pension shall be made or allowed, except so much as may be necessary to reimburse the person who bore the expenses of the last sickness and burial of the decedent in cases where he did not leave sufficient assets to meet such expenses."

If this section applies to pensions under the act of 1879, then this claimant has no cause of action, because it is therein expressly declared that accrued pensions shall not be considered as part of the assets of the estate of the deceased.

It is contended on behalf of the claimant that the demand sued on is not an "accrued pension," and so does not come within the provisions of that section, but is a debt with a vested right of action against the United States, which, like other debts and rights of action, pass to the administrator on the death of the creditor. This view is based upon the language of the act of January 25, 1879, chapter 23 (Supplement to Rev. Stat., p. 395), under which the certificate was issued, wherein the pensions thereby granted are called "arrears of pension," and are not styled "accrued pensions."

We are unable to concur in this construction. That act did not grant any specific sum of money, but merely extended the operation of previously existing pension laws, so as to cause the pensions therein mentioned to begin to run from the date of the death or discharge from service of the pensioners. The act was an extension of former acts and must be read and construed in connection with them, as statutes *in pari materia* are always read and construed together, in order to ascertain the legislative will. At the time of the issue of the certificate to the claimant's intestate, the amounts due him were as much "accrued pensions" as they were "arrears of pensions." As to such pensions, either of the two forms of expression is correct. They do not differ from each other in meaning. In other pension acts the same expressions are used without that technical distinction which the claimant now seeks to establish. (Act of June 6, 1866, sec. 6; act of July 26, 1866, sec. 4, 14 Stat. L., 57, 230; act of July 27, 1868, sec. 9, 15 Stat., 236.)

That Congress understood and intended section 4718 of the Revised Statutes to apply to the act of July 25, 1879, under which this certificate was issued, is further manifest from section 2 of the latter act, which is as follows:

"SEC. 2. That the Commissioner of Pensions is hereby authorized and directed to adopt such rules and regulations for the payment of the arrears of pensions hereby granted as will be necessary to cause to be paid to such pensioners, or, if the pensioner shall have died, to the persons entitled to the same, all such arrears of pensions as the pensioner may be, or would have been, entitled to under this act."

This section assumes that in case of the death of the pensioner there may be other persons entitled to the same under some other provisions of the statutes. No provisions of that kind exist other than those which are found in Revised Statutes, section 4718. We have already shown that those provisions when first enacted in 1873 constituted an entire change of policy on the part of Congress. They expressly declare that "such accrued pension shall not be considered as part of the assets of the estate of deceased, nor liable to be applied to the payment of the debts of said estate, in any case whatever, but shall inure to the sole and exclusive benefit of the widow or children, and if no widow or child survive, no payment whatever of the accrued pension shall be made or allowed, except so much as may be necessary to reimburse the person who bore the expenses of the last sickness and burial of the deceased, in cases where he did not leave sufficient assets to meet such expenses."

We see nothing in the act of 1879 to take the case out of the operation of this general and continuing statute.

In our opinion the decision of the Commissioner of Pensions, affirmed by the Secretary of the Interior, that the right to the accrued pension, or pension in arrears, which the claimant's intestate would have been entitled to had he lived to demand it, did not survive to his administrator was correct, and therefore we hold that the claimant has no cause of action, and the demurrer must be sustained.

Upon this decision being made, a bill was introduced for relief by special act. The following additional evidence has been filed to sustain such action:

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Vincent P. Donnelly, being duly sworn according to law, deposes and says: That on the 5th day of November, 1879, he was duly appointed administrator of the estate of Peter Lyle, deceased, late colonel of the Nineteenth Pennsylvania Volunteers, as shown by proofs in the United States Court of Claims, filed May 13, 1881, case No. 12676. That deponent was well acquainted with the pecuniary circumstances of the said decedent, and all the property and estate of whatever kind, real or personal, did not exceed in value $50, and consisted of his personal clothing only. That decedent's last sickness continued for three years immediately preceding his death, and during all this period he was wholly unable to labor, or in any way provide for his maintenance. That he was in great poverty during such period and was only saved from absolute want of the necessaries of life by the services and pecuniary assistance rendered him by friends, as set out in Senate bill No. 701.

Deponent further saith that he has read carefully the preamble to the said bill, which was introduced by the Hon. John I. Mitchell on the 18th day of January, 1885, and from his knowledge of the allegations therein contained, he avers that the same are just and true, and he hereby makes the preamble of the said bill a part of this affidavit.

Deponent further saith that the sum of $3,909.86, being the aggregate amount of the indebtedness referred to in said bill, includes all of the obligations of honor due by said decedent; that the amount is just, true, and reasonable in every particular, having been judicially established by the court of common pleas for the county of Philadelphia, and judgments rendered and entered of record against deponent as administrator of the estate of the said Peter Lyle, deceased. Deponent therefore prays that the said bill be passed.

VINCENT P. DONNELLY.

Sworn and subscribed before me this 12th day of December, A. D. 1885.
[SEAL.] FRED'K J. LAMBERT,
Notary Public.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Robert P. Dechert, being duly sworn according to law, saith that he is the city controller in and for the city of Philadelphia; that he was acquainted with Peter Lyle during his life, and with the circumstances connected with his services in the Army, his sickness and suffering, and debts of honor, etc., as recited in the preamble of Senate bill No. 701 introduced by Hon. John I. Mitchell on January 18, 1885; that he has read said bill, and from his personal knowledge of all facts therein referred to he hereby indorses and corroborates the essential accuracy of the same.

Deponent further saith that the aggregate amount of the debts of honor incurred to friends for his daily bread and other necessaries of life during his long sickness has been judicially established by the court of common pleas for the county of Philadelphia in entering judgments on several claims, as follows, viz: Eight several judgments obtained and entered of record on April 26, 1884, against Vincent P. Donnelly, administrator of the estate of the said Peter Lyle, deceased, amounting in the aggregate to the sum of $3,909.86.

Deponent further saith that he has examined the details and charges that go to make up the amount of these judgments, and he verily believes them to be just and true in every particular, and embrace only such items of service and expenditure and advances as were made necessary by the last and exceptionally protracted sickness and the death and burial of the said Peter Lyle, deceased, late colonel of the Nineteenth and Ninetieth Pennsylvania Volunteers.

ROBERT P. DECHERT.

Sworn and subscribed before me this 9th day of December, A. D. 1885.
[SEAL.] FRED'K J. LAMBERT,
Notary Public.

The pertinent facts of this case, then, as shown by all the evidence before your committee, are briefly summarized in the preamble to the bill, as follows:

"Whereas Peter Lyle, deceased, late colonel of the Ninetieth Pennsylvania Volunteers, was mustered out of the service of the United States, in the field in front of Petersburg, Va., November 26, 1864, for wounds received in battle and which have incapacitated him from further duty; and

"Whereas a certificate of pension was, on account of his services and wounds received therein, issued to him on July 16, 1879; and

"Whereas, pending the adjudication of his pension claim, he was, solely by reason of his injuries, wholly unable to labor or in any way earn his maintenance, and was supported from the private means of personal friends, whose advances he engaged and promised to refund out of the arrears of pension due him, when he should receive the same; and

"Whereas his unimpeachable personal character was held as sufficient security that such debts of honor would unquestionably be so paid by him; and

"Whereas he died on July 17, 1879, after years of great suffering, and after his clear right to pension was fully established and the amount of arrears due him had been definitely ascertained and ordered to be paid to him by the pension agent at Philadelphia; and

"Whereas it was indubitably his intention and desire to apply such amount to the discharge of his debts thus incurred and predicated on such allowance, and for the payment for which his honor was pledged; and

"Whereas he died intestate, unmarried, and without issue; and

"Whereas letters of administration on his estate were duly granted to Vincent P Donnelly, of Philadelphia, on November 5, 1879, the application for said letters being for the sole and express purpose of disbursing said arrears according to the wish and obligations of Colonel Lyle; and

"Whereas the amount of said arrears in the sum of $3,724 was unquestionably the property of Lyle as soon as his right and title thereto were certified by the Commissioner of Pensions, and would have been paid into his hands but for the accident of his death before the formal vouchers were presented for his signature; and

"Whereas the official construction of the law interposes a technical bar to the payment of said money to said administrator; and

"Whereas a just and equitable regard is due from the Government to the dying wishes of a brave, accomplished, and deserving officer, who not only gave his life to the service of his country, but endured years of physical suffering, added to the years of torture to which his sensibilities were subjected by his enforced obligations incurred to friends for his daily bread and needs and inability to offer them other security than the justice of his country when it might choose to recognize its obligations; and

"Whereas a moral obligation was thereby bequeathed by him to his Government, which it is in equity and good conscience bound to discharge; and

"Whereas the fact that the certificate was actually issued, and was practically in the nature of a warrant for payment, renders the equities in this case exceptionally perfect: Therefore, for the purpose of discharging the aforesaid obligations, the incurrence of which to the total of $3,909.86 have been incontestably shown and admitted, so far as the said arrears due at the time of Colonel Lyle's death, pro rata, may—"

There is no question as to the facts as set forth, and the claimant argues in his brief that it has been held by the Supreme Court of the United States that an *allowance* of this character is a *settlement* of the claim, and fixes the liability of the Government; that the claim being settled it becomes an indebtedness, citing 96 U. S., 567; 4 Wall., 435, and 102 U. S., 397, 402.

Section 4718, Revised Statutes, provides that—

"No payment of accrued pension shall be made or allowed except so much as may be necessary to re-imburse the person who bore the expenses of the last sickness and burial of the decedent."

Your committee are of opinion that the evidence shows that there were several persons who rendered medical attendance, who furnished money, nursed and clothed and fed this unfortunate ward of the nation during his long-continued last sickness, and that these expenses and attentions were necessary to keep this brave old wounded soldier, who had served his country so faithfully, from starvation, beggary, and rags, or from the almshouse. It is shown that for the payment of these services and expenses rendered by comrades and others the soldier had pledged his honor, and had based his pledge upon his claim for arrears of pension due him; that his last sickness continued for three years immediately preceding his death, and that during all this time he was wholly unable to labor or in any way provide for his maintenance. This indebtedness, as judically established, amounts to $3,909.86; and judgments for this amount have been rendered by the courts against the administrator, Vincent P Donnelly.

The amount awarded by the certificate was $3,724, and would have been used to liquidate the above debt if the soldier had lived to actually receive it. The present

bill simply proposes to pay this amount to said administrator, as the law, as officially construed, seems to interpose a technical bar to such payment.

Your committee are of opinion that even under section 4718, Revised Statutes, this amount might be properly considered as necessary to re-imburse "the expenses of the last sickness and burial of the decedent." In view of all the facts it would seem that the Government should, as a matter of justice, pay this claim, and thus discharge the obligations in honor of this brave soldier, who gave his life to the service of his country: and we therefore report back the bill, with a recommendation that it do pass.

The bill should, however, be amended by striking out all of the preamble between the title and the enacting clause.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 99.

JOHN L. RHEA, EXECUTOR OF SAMUEL RHEA, DECEASED, AND JOSEPH R. ANDERSON.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. W. J. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2991.]

The Committee on War Claims, to whom was referred the bill (H. R. 2991) for the relief of John L. Rhea, executor of Samuel Rhea, deceased, and Joseph R. Anderson, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto appended for information.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[House Report No. 4096. Fiftieth Congress, second session.]

The Committee on War Claims, to whom was referred the claims of John L. Rhea, executor of Samuel Rhea, deceased, and Joseph R. Anderson, report as follows:

The claim of Rhea is for part of the proceeds of 58 bales of cotton, seized in 1864 by the United States military authorities in the city of Atlanta, Ga., and turned over to the Treasury agents, and by them sold and the proceeds paid into the Treasury.

Early in the year 1862 the decedent, Samuel Rhea, sent $12,498.80 to J. A. Ansley, of Augusta, Ga., of which sum $5,010 belonged to his son-in-law, John H. Fain, to be invested in raw cotton, and the expenses attending the same to be paid by each in proportion to their respective shares. Ansley, it appears, invested the money sent him, as instructed, in the name of Rhea, and afterward, in the fall of 1862, shipped the cotton purchased in Rhea's name from Augusta, Ga., to Robert J. Lowery, a merchant in Atlanta, Ga. Lowery says:

"I had on storage in my house, to the credit of Samuel Rhea, 251 bales of cotton. I received it in the months of October and November, 1862. Twenty-five bales of this cotton was sold in November, 1863, to pay taxes, storage, etc.; burned in the warehouse during the shelling by General Sherman's forces, 43 bales; shipped to Gaines & Co., Macon, Ga., 125 bales, to be stored to the credit of Samuel Rhea."

It appears, in the year 1862, that N. M. & Robert J. Lowery purchased 65 bales of raw cotton, which they kept in their warehouse at Atlanta until September, 1864, when it was all burned by General Sherman's forces except 5 bales, so that there remained the 58 bales of Rhea's and Fain's cotton and the 5 bales of Anderson's cotton in the custody of Mr. Lowery in Atlanta, which was turned over to Capt. E. Hade, as appears by the following receipt:

OFFICE ASSISTANT QUARTERMASTER,
Atlanta, Ga., September 19, 1864.

I certify that I have this day taken possession of the following property, for and in behalf of the United States, for Government purposes. Said property was found in the city of Atlanta immediately after its capture by United States forces. Said prop-

erty is claimed to have belonged to R. J. Lowery, a citizen of Atlanta. Viz, (63) sixty-three bales cotton, marked D. [L.,] weighing (31,424) thirty-one thousand four hundred and twenty-four pounds. And will be duly accounted for on my return of quartermaster stores for the month of September, 1864. No payment has been made or tendered for said property.

E. HADE,
Capt. and A. Q. M.

The 63 bales embraced in the receipt—58 bales of Rhea & Fain and the 5 bales of Anderson—was taken in the name of R. J. Lowery, but Mr. Lowery in his evidence says:

"The cotton did not belong to me; but the receipt was taken in my name, because I was agent for the parties owning the cotton, and expected to collect the money immediately from the Government; and the parties not being present to attend to it, it was thought best to take the receipt in my name."

The amount of money invested in cotton by Ansley in the name of Rhea was $12,498 50, of which sum $5,000 belonged to Fain.

Fain brought suit in the Court of Claims for the whole amount of the net proceeds of the 58 bales of cotton in 1867 (4 C. Cls., p. 237), and the court held that the facts in the case did not establish a partnership; that the ownership of the cotton before its seizure was joint, with the right of each party to control his interest at discretion; that Fain was just entitled to recover of the proceeds of the sale of 58 bales of cotton a sum in proportion to the amount of his funds invested therein, which was found to be $8,360.

In the Price case (7 C. Cls., pp. 567 and 577) the Court of Claims delivered an elaborate opinion showing the amount and value of cotton taken from Atlanta which came to the possession of the Government, and it was found that the value of the 58 bales of cotton was $360.27 net per bale, of which $22\frac{6}{15}$ bales was Fain's proportionate share, which would leave Rhea's proportionate share $35\frac{9}{15}$ bales, at the rate of $360.27 per bale, amounting to the sum of $12,825.61 due Rhea. The 5 bales of cotton claimed by Anderson were taken and sold by the Government at the same time, which, at the rate of $360.27 per bale, would make due Anderson the sum of $1,803.35.

Both Rhea and Anderson were residents of Sullivan County, East Tennessee, that part of the State which was notorious for its loyal citizens; they both voted against and resisted secession and remained loyal to the Government of the United States throughout the war. Rhea was an abolitionist, and freed his slaves as early as 1843 and sent them to Liberia. Anderson was one of the board of directors of the East Tennessee and Virginia Railroad during the rebellion, and was instrumental in having the rolling-stock of the said road turned over to the Government of the United States.

Your committee report back the accompanying bill as a substitute for H. R. 2910, and recommend its passage, with the following amendment: That the words "five" and "fourteen" in line 9 be stricken out, and in lieu thereof the words "eight" and "twenty-five" be inserted, and in line 10 the words "seven," "three," and "fifty cents" be stricken out, and in lieu thereof insert the words "eight," "three," and "thirty-five cents."

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report. No. 100.

MATILDA COOK.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Stone, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2885.]

The Committee on War Claims, to whom was referred the bill (H. R. 2885) for the relief of Matilda Cook, report as follows:

The claim is for a mule taken from the claimant in Caldwell County, Ky., by the Army of the United States during the late war. Claim stated at $150.

The claim was filed in the office of the Quartermaster-General November 15, 1865, and on April 21, 1884, disallowed for the reason that the Quartermaster-General was not satisfied as to the loyalty of the claimant.

The agent who investigated the claim reported that the mule was taken from the claimant by Captain Mass, of the Army of the United States, for the use of the Army, and was worth $150. The loyalty of the claimant is established by the best citizens of Princeton, Ky.

Your committee are satisfied as to the loyalty of the claimant and the taking and use of the property by the Army, and report back the bill and recommend its passage.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 101.

FOR THE RELIEF OF THE HEIRS OF JAMES A. GREGORY.

February 15, 1890.—Committed to the Committee of the whole House and ordered to be printed.

Mr. Stone, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2922.]

The Committee on War Claims, to whom was referred the bill (H. R. 2922) for the relief of the heirs of James A. Gregory, report as follows:

That this is a claim for ten mules taken from the claimant by the Army of the United States during the late war. Claim stated at $1,500.

Claimant filed his claim in the office of the Quartermaster-General, November 7, 1865, for adjudication under the provisions of the act of July 4, 1864. The Quartermaster-General rejected the claim for the want of jurisdiction. Claimant resided in the State of Kentucky, and the property was taken from his agent in the State of Mississippi.

The proof filed in support of this claim shows that the decedent was a loyal man, and that ten mules of the value of $1,500 were taken from him by the Army of the United States during the late war.

Your committee therefore report back the bill and recommend its passage with the following amendment:

Strike out the word "heirs" wherever it appears in the bill and insert in lieu thereof the word "estate."

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 102.

FRANCIS M. MURRAY, DECEASED.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2951.]

The Committee on War Claims, to whom was referred the bill (H. R. 2951) for the relief of the estate of Francis M. Murray, deceased, report as follows:

That in the latter part of the year 1863 Francis M. Murray, deceased, of McCracken County, Ky., was owner of a one-third interest in a barge load of coal, lying at the wharf in the city of Paducah, Ky., consisting of about 4,000 bushels, all of which was taken in the night-time by one or more of the steamers *Princess* No. 2, *White Cloud*, and *Empress*, which were at the time in Government employ. No receipt or voucher appears to have been given for the same. The Government had coal in the vicinity, and it appears probable from the evidence that the coal in question was taken through a mistake of the officers in charge of the boats, they supposing it to belong to the Government.

The committee find the amount of coal belonging to said Murray which was taken to have been 3,000 bushels, and the value at the time it was taken to have been 30 cents per bushel.

Mr. Murray is shown to have been an ardent and devoted Union man. The claim was presented to the War Department by Margaret T. Murray, administratrix of the estate of the said Francis M. Murray, deceased, under the act of July 4, 1864, and investigated by an agent of the Quartermaster-General, and disallowed by the Quartermaster-General for the reason that it appeared that the vessels taking the coal were at the time under the direction of the Navy Department, and that the coal taken and used by them was not a proper charge against the War Department.

The claim and accompanying papers were thereafter, at the request of the attorneys for the claimant, referred to the Secretary of the Navy for examination and payment, and returned by him to the Secretary of War, with the information that the records of the Navy Department afforded no information concerning the claim.

Your committee report back the bill and recommend its passage.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 103.

TO REFUND DUTIES PAID BY THE STATE OF NEW YORK ON ARMS IMPORTED IN 1863.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 597.]

The Committee on War Claims, to whom was referred the bill (H. R. 597) to refund duties paid by the State of New York on arms imported in 1863. report as follows:

That this claim was presented to the Forty-ninth Congress, and a report was made in regard to it by the Committee on War Claims, on the 23d of March, 1886. As the examination by your committee has led them to the same results with those arrived at by the committee of 1886, they do not think it necessary to recapitulate the facts, but refer to that report, and therewith annex a copy for information.

Your committee therefore recommend that the bill referred to them do pass.

[House Report No. 1297, Forty-ninth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 5011) to refund duties paid by the State of New York on arms imported in 1863, having examined the same and accompanying papers, submit the following report:

This claim is for duties paid by the State of New York on arms imported in 1863, and used in arming troops that were mustered into the service of the United States.

The foreign cost of the arms has been repaid by the United States, but the cost of importation has never been refunded. The application made by the State that it might be released from paying the duties was denied, for the reason that the act to remit duties on arms imported by States, approved July 10, 1861, and the act supplementary thereto, approved July 25, 1861, had expired by limitation.

It is evident that the foreign cost of the arms having been repaid by the United States, that part of their cost that the State was compelled to pay to the United States should also be refunded.

It seems to your committee that the duties paid were quite as much a part of the cost, c arges, and expenses to the State in arming the troops as the original cost of the arms.

The duties were paid in gold, and at a time when the premium on gold was very high, which, of course, increased largely the expense of the State.

Your committee therefore recommend that said State of New York be re-imbursed the amount of said duties paid on arms purchased by said State in 1863, and thus used in arming troops which were mustered into the service of the Federal Government, and that said bill do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 104.

RELIEF OF CERTAIN SOLDIERS AND SAILORS OF THE LATE WAR.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Brower, from the Committee on War Claims, submitted the following

REPORT.

[To accompany bill H. R. 626.]

The Committee on War Claims, to whom was referred the bill (H. R. 626) for the relief of certain soldiers and sailors of the late war, report as follows:

The bill authorizes the accounting officers of the Treasury Department to audit and pay the claims of certain soldiers and sailors for bounty who served in the military or naval service of the United States, and who had previous to such service been conscripted or drafted into the Confederate service. Under existing law this class of claimants is not entitled to bounty.

This class of claims has been filed in the office of the Second Auditor of the Treasury Department and rejected for the reason that, under existing laws, the claimants were not entitled to bounty.

Having obtained the benefit of these claimants' services, the Government ought not to set up a technical plea in bar of its obligation to make compensation therefor.

Your committee are of opinion that it would not comport with the dignity of the Government thus to break faith with the gallant men who in that hour of gloom stood forth to peril their lives for their country.

Under the circumstances, your committee have deemed it just to report back the bill and recommend its passage with the following amendment:

At the end of line 11 insert the following, "provided that the claimants furnish satisfactory proof that the service performed in the Confederate service was compulsory."

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 105.

WARREN HALL.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BROWER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2888.]

The Committee on War Claims, to whom was referred the bill (H. R. 2888) for the relief of Warren Hall, report as follows:

The facts out of which this claim arises will be found stated in Senate report of the Committee on Claims of the Fiftieth Congress, a copy of which is hereto attached and made a part of this report.

Your committee adopt the said report as their own and report back the bill and recommend its passage.

[Senate Report No. 2462, Fiftieth Congress, second session.]

The Committee on Claims, to whom was referred the bill (S. 902) for the relief of Warren Hall, have considered the same and respectfully report:

Warren Hall, the claimant, alleges that he is the son of a free woman, an Indian, and that he was born in the city of Alexandria; that when a youth he was kidnapped in New Orleans, where he had gone as a race-rider, and sold to a planter in Mississippi by the name of Roach, by whom he was treated until 1863 in some respects as a free man and in others as a slave. Hall further claims that during this period he was allowed to raise hogs and other stock, which he exchanged with Roach for cotton, and in this way he had accumulated some 75 or more bales of cotton. In the year 1863 sundry lots of cotton along the Mississippi were seized by United States troops, to be used in the fortifications at Memphis. This cotton was sold at a later date and the proceeds placed in the United States Treasury. In this cotton thus taken, used, and sold, were the bales Hall claims, which he had received in exchange for his hogs, by contract with Roach, and of which he was the lawful owner.

Hall endeavored to assert his right of ownership by application to the Quartermaster-General and by suit in the Court of Claims and in the Supreme Court of the United States, but without success, the courts holding that his condition in fact was that of a slave, and that in consequence he was incapable of making contracts or of acquiring property.

It would seem to your committee that under these facts injustice is done to Hall by enforcing the harsh rule of slavery in his case. If the story of his birth be true he was by law free born and his mother was a free woman, and her legal status would determine his. His servitude, therefore, was the result of force and not of law. He was still a free man, although unable to assert his freedom.

The bill under consideration is intended to refer the entire case to the Court of Claims, removing simply the bar of limitation and the hitherto insuperable bar of so-called "slavery *de facto*." Hall then would be allowed to prove his free birth, the contract with Roach, and his title to the property, if possible.

Some questions have been raised, in the course of the investigation, as to the good faith and genuineness of Hall's claim. All these questions will be passed upon by the court if the proposed statute be enacted, and the burden will be upon him to establish his title in all respects.

Your committee recommends, therefore, the passage of the bill, with the following amendment: In line 8, after the word "trial," insert "if it shall appear that said Hall was in fact free born he shall be deemed to be entitled to all such rights as he would have had if he had continued a free man, notwithstanding he may have been reduced to a state of slavery *de facto* by the operation of the laws of any State."

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 106.

CITIZENS' BANK OF LOUISIANA, ETC.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Brower, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 3209.]

The Committee on War Claims, to whom was referred the bill (H. R. 3209) to authorize the Court of Claims to hear and determine the claim of the Citizens' Bank of Louisiana, etc., report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and recommend that the bill do pass with the following amendments: In line 7 strike out the words "alleged unlawful," and in lines 5 and 6 strike out the words "with interest thereon," and strike out in line 11 all after "Supreme Court" down to and including the word "act," in line 14.

[House Report No. 4120. Fiftieth Congress, second session.]

Your committee, after careful consideration, submit the following as the result of their conclusions:

The Citizens' Bank of Louisiana claims from the United States the sum of $215,820.89, exacted from it June 19, 1862, by the order of Maj. Gen. B. F. Butler, commanding the United States forces at New Orleans, which amount was turned over to the quartermaster and covered into the Treasury of the United States.

This case was before the Senate Committee on Claims in the Forty-eighth and Forty-ninth Congresses and reported favorably by said committees to the Senate, but minority reports signed by two members in the Forty-eighth and one member in the Forty-ninth Congress were also presented.

The record of the claim shows indisputably the following facts;

(1) The Citizens' Bank is a corporation under the laws of Louisiana, doing a general banking business since 1836, the stock being held in nearly every State of the Union and in Europe.

(2) In 1861 it, together with all other banks in the Southern States, suspended specie payment, and its business was then transacted in Confederate treasury notes, which had wholly superseded coin in all business transactions.

(3) September 16, 1861, the Citizens' Bank made a contract with all depositors, which contract was printed in all books of deposit, which stipulated that thereafter, to wit, after the 16th of September, 1861, all deposits made would be payable in the treasury notes of the Confederate States.

(4) Thereafter, and under the terms of said contract, deposits were made by certain officers and agents of the Confederate Government as follows:

Confederate States treasurer's account	$219,090.94
Special account	12,465.00
J. M. Huger, Confederate receiver	106,812.00

G. W. Ward, Confederate receiver	72,082.00
J. C. Manning, Confederate receiver	1,120.00
Maj. M. L. Smith	16,026.52
Maj. S. Maclin	6,814.57
Major Reichard	497.30
Total	434,908.33

The said sums were deposited in, and by said contract payable in, Confederate States treasury notes only.

(5) The United States fleet under Admiral Farragut captured and occupied New Orleans about the 28th of April, 1862, and on May 1 General Butler, commanding, issued a proclamation to the people of the conquered city, in which he declared that "all the rights of property of whatever kind will be held inviolate, subject only to the laws of the United States."

(6) A month afterwards, in June, 1862, General Butler ordered ("General Order No. 40") all the New Orleans banks to report and turn over to the United States military authorities all property held by them, either "general or special deposits, bills of exchange, or other evidences of debt belonging to any officer or person serving in any way the Confederate States, the State of Louisiana, or any Confederate State."

(7) June 11, 1862, the Citizens' Bank reported as follows:

CITIZENS' BANK OF LOUISIANA,
New Orleans, June 11, 1862.

GENERAL: In obedience to your General Order No. 40, I beg to inform you that on the 1st of May last there was to the credit of the treasurer of the Confederate States in this bank the sum of $219,090.94; and also on special account the further sum of $12,465; and this bank holding a larger amount in the notes of the Confederate treasury, an equivalent amount in said treasury notes has been set aside, and is now held by the bank, to offset the above stated amount, and which notes I will return as the property of the Confederate States under your order.

Also, one small tin box, marked "Confederate States district court."

The following named parties have also to their credit on deposit these sums, viz:

J. M. Huger, Confederate States receiver	$106,812.60
G. W. Ward, Confederate States receiver	72,084.90
J. C. Manning, Confederate States receiver	1,120.00
Maj. M. L. Smith, Confederate States receiver	16,026.54
Major Macklin, Confederate States receiver	6,814.57
Major Richard, Confederate States receiver	476.30

As the deposits by the receivers were made in this bank by virtue of an order of the Confederate court, in accordance with the act of Congress, they were to that extent compulsory on the receivers as well as on the banks. To have refused to comply with the mandate of the court might have brought both parties into conflict with the constituted authorities for the time being.

All the above-mentioned deposits were made in the currency of the Confederate government by its appointed officers.

Had the bank resumed specie payment or become bankrupt in the meantime, those depositors would have had no claim to the coin or to a pro rata distribution of the other assets of the bank. They could only have claimed the currency deposited by them, and hence it may be classed as special deposits of Confederate funds, payable in same, in accordance with the contracts and understanding at the time. Under the circumstances the bank appeals to General Butler's sense of equity and justice to allow these deposits to be paid to whom it may concern in the same currency in which they were received.

Some time during the month of November last an order of sequestration was issued to the marshals of the Confederate States to take charge of the assets of the Bank of Kentucky, then held by this bank in the usual course of business.

The assets have never been removed from the bank, yet still are nominally beyond its control.

I therefore respectfully request from the commanding general an order to refund to the Kentucky bank, the owners of said assets, that the accounts may be made out accordingly and a due return forwarded to them.

The banks were informed on the seizure of their assets at the time, and one of them, the Bank of Kentucky, had a resident agent here at that time.

With great respect, your obedient servant,

JAMES D. DENEGRE,
President.

Maj. Gen. B. F. BUTLER,
Commanding at New Orleans.

(8) To this showing General Butler replied in a characteristic letter, which closes as follows:

"Therefore, I must direct all the items but the first to be paid to my order for the United States in gold, silver, or United States Treasury notes, at once. The first item of $219,090.94 I will refer to the home government for adjudication; and, in the meantime, the bank must hold as a special deposit the amount of Confederate notes above mentioned, and a like amount of bullion to await the decision.

"BENJAMIN F. BUTLER,
"*Major-General, Commanding.*"

(9) General Butler then sold, through Jacob Barker, the first item, to wit, $219,090.94 in Confederate treasury notes, and realized about 33⅓ cents on the dollar, amounting to $73,030.31 in United States currency, which was covered into the Treasury. This proceeding was perfectly right and proper under the laws of war, and had General Butler proceeded in the same way with the deposits of the Confederate officers and receivers, the Citizens' Bank would have had no claim against the Government. But he did not.

(10) On the contrary, he obliged the bank to pay over the whole of the balance of said deposits standing in the name of the Confederate receivers and agents, and which were undoubtedly the public moneys of the Confederate government, and which amounted to $215,820.89 in gold, silver, or United States currency. This was done by the bank on the 19th of June, 1862, in a check on the Bank of America of New York, and was covered into the Treasury of the United States.

Such are the facts.

As applicable thereto the following is submitted as embodying the law that must govern the case:

First. The order of General Butler obliging the Citizens' Bank to pay $215,820.89 in good and lawful money, was wholly illegal and without any authority in law, civil or military, because—

(1) Said order was a violation of his own proclamation of May 1, 1862, in which he declared that "all the rights of property, of whatever kind, will be held inviolate, subject only to the laws of the United States."

In the case of the *Venice* (2 Wall., 258), the Chief-Justice said:

"Hence the proclamation of the commanding general at New Orleans must not be interpreted by such rules as govern the case of the ships taken at Genoa. Vessels and their cargoes belonging to citizens of New Orleans * * * after the publication of that proclamation must be regarded as protected by its terms."

In the case of The Planters' Bank *v.* The Union Bank (16 Wall., 483), the court held that—

"A military commander commanding the department in which New Orleans was situated had not the right on the 17th of August, 1863, after the occupation of that city by General Butler, and after his proclamation of May 1, 1862, announcing that 'all the rights of property of whatever kind will be held inviolate, subject only to the laws of the United States,' to seize private property as booty of war, or, in face of the acts of Congress of 6th of August, 1861, and July 17, 1862, make any order confiscating it."

(2) Said order was a violation of a contract between the Citizens' Bank and its depositors. The deposits of the Confederate receivers were made in Confederate money, and they had agreed to take Confederate money in payment. This contract General Butler had no power to alter or derogate from. The Supreme Court (16 Wall., 483) has expressly declared that such a contract was legal and could be enforced. As such it formed an important right of property which General Butler was without authority to violate or change.

(3) General Butler could only take whatever rights the Confederate Government or its agents and officers had to any deposits or property in the Citizens' Bank. He did take the first item of deposit standing in the name of the Confederate States treasurer, viz, $219,090.94 in Confederate treasury notes and caused it to be sold and realized $73,030.31 in United States currency. The other deposits standing to the credit of the Confederate agents and receivers were equally the public moneys of the Confederate government, and as such were lawful booty of war. But he did not take the last-mentioned amount. On the contrary, he left the $215,820.89 in Confederate treasury notes in the vaults of the bank and compelled the bank to pay over $215,820.89 in "gold, silver, or United States Treasury notes." In other words, he failed to take from the bank's custody what he might have lawfully taken as booty of war, and unlawfully seized and took away the property of the bank which he was without the slightest authority to take, and turned it over to the Treasury of the United States, where it now is, and has been for twenty-four years.

The Supreme Court in the cases cited above has decided such a seizure to have been unlawful. And if the seizure was unlawful there would seem to remain on the part of the Government the plain duty of righting the wrong. How to do this best

and most safely to the interests of all concerned is the question. The bill under consideration provides that the amount thus unlawfully seized be restored directly to the bank. But here arise the questions which it would seem were clearly within the province of the courts rather than the legislature to determine.

First. What amount shall be returned to the bank? True, General Butler took the sum of $215,820.89 from the bank unlawfully. But he left in the hands of the bank a like sum in Confederate currency, which had some commercial value at the time. Whether the bank realized on it or not, or whether it was left by the bank to become valueless by the result of the war, and, if so, whether the bank is not guilty of laches, are questions which enter into the case and which should be decided by the courts.

Second. General Butler declares that the deposit of $215,820.89 was made in gold, silver, or its equivalent. The proof is strong that it was made in Confederate currency. General Butler was not in New Orleans in 1861 when the deposit was made. He had no means of knowing in what kind of currency the deposit was made, nor does he give his authority for his assertion. But little weight is therefore to be attached to his declaration in this regard. Still it is a question in the case which the courts should determine, for if said deposits were in lawful money it would seem that the bank only gave up what it received.

Third. Whether the printed notice in the depositors' bank books, that "thereafter all deposits should be paid in Confederate currency," did not constitute a contract between the bank and the depositors which could not be impaired is yet another question for the decision of the courts rather than for Congress.

Finally. Whether, if General Butler did unlawfully seize the funds of the bank, interest is not justly due by the Government, which has had the use of the money since the seizure, is yet another question which the courts, and not Congress, should determine.

Your committee is therefore of the opinion that this claim should be referred to the Court of Claims, with right of appeal by either party, and that, considering the great length of time that has elapsed since the seizure, trial by preference should be awarded.

We therefore report a substitute for H. R. 3717 and recommend that the original bill be laid on the table and the substitute be passed.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 107.

MRS. SARAH H. WOOD.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BROWER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 4286.]

The Committee on War Claims, to whom was referred the bill (H. R. 4286) for the relief of Mrs. Sarah H. Wood, report as follows:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and recommend that the bill do pass.

[Senate report No. 1500, Fiftieth Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 1257) for the relief of Mrs. Sarah H. Wood, have considered the same and respectfully report:

Mrs. Sarah H. Wood, the claimant, is a widow now living in Baltimore, Md. In the year 1862 she resided in her country home in Louisiana, about 100 miles from New Orleans, where she had gone on the advice of a physician on account of the feeble health of her children. August 12, 1863, she moved into the city of New Orleans, and at once took the oath of allegiance required under General Order No. 41, Department of the Gulf. She had at that time on deposit in the Bank of Louisiana $2,240.74. This fund consisted of notes of the said bank. September 11, 1863, this money, with money of other depositors in the said bank, was seized under General Order No. 202, Department of the Gulf, "requiring the several banks and banking associations of New Orleans to pay over to the chief quartermaster of the Army, or to such officers of his department as he might designate, all money in their possession belonging to or standing upon their books to the credit of any person registered as an enemy of the United States or engaged in the military, naval, or civil service of the so-called Confederate States, or who should have been or might thereafter be convicted of rendering any aid or comfort to the enemies of the United States." A receipt for the funds thus taken was given to the bank by Capt. John W. McClure, assistant quartermaster. They were placed in the hands of Col. S. B. Holabird, chief quartermaster, and by him were sold, realizing to the Government 60 per cent. of their face value. The proceeds of this sale were accounted for to the Treasury, in the quartermaster's sequestration account, as money on hand and received during the month of February, 1864.

It is proposed in the bill for the relief of Mrs. Wood to pay her 60 per cent. of her original deposit, which is the amount received by the Government as proceeds from the sale of the funds representing her claim against the bank. The facts on which she rests her claim are clearly established by receipts of the United States officers contained in House Executive Document No. 101, Forty-ninth Congress, first session, and by the sworn petition of Mrs. Wood.

The order of General Banks, by which the funds in the Bank of Louisiana were sequestrated, has been held by the Supreme Court of the United States to be illegal

(Planters' Bank *vs.* Union Bank, 16 Wall., 483, 497). The acts of Congress of August 6, 1861, and July 17, 1862, "designated Government agents for seizing enemy's property and they directed the mode of procedure for its condemnation in the courts. The system devised was necessarily exclusive. No authority was given to a military commandant, as such, to effect any confiscation. And under neither of the acts was the property of a banking institution made confiscable. Both of them had in view the property of natural persons who were public enemies, of persons who gave aid and comfort to the rebellion, or who held office under the Confederate Government, or under one of the States comprising it. * * * It follows then that the order of General Banks was one which he had no authority to make, and that his direction to the Union Bank to pay to the quartermaster of the Army the debts due the Planters' Bank was wholly invalid. (Opinions of Court, by Strong, J.)"

The order, however, although illegal, was enforced. The funds were taken and appropriated to the use of the United States Government. Under these circumstances the bank has no remedy against the military officer, if the statute entitled "An act rgulating judicial proceedings in certain cases for the protection of officers and agents of the Government, and for the better defense of the Treasury against unlawful claims," approved July 27, 1868, be valid.

It is settled by the Planters' Bank *vs.* Union Bank, already quoted, that if the claimant had brought suit against the Bank of Louisiana she would have recovered, in spite of the payment under the order of General Banks, and the bank then would have been entitled in justice to a remedy which should be provided by Congress. But there is no occasion for this circuity of action. It is quite as convenient and as well for the public interest that the remedy should be afforded directly to the claimant.

Similar relief has already been given to three of the depositors in the Bank of Louisiana whose claims were precisely the same as Mrs. Wood's. E. E. Simpson, and the legal representatives of J. A. Simpson, recovered 60 per cent. of their deposit under a judgment of the Court of Claims (found 7 Court of Claims, 632).

The grounds of the decision of the Court of Claims in these cases are not reported. It does not appear that the attention of the court was called to the consideration that the jurisdiction conferred upon the Court of Claims by section 1059, fourth clause, Revised Statutes, extended only to captured and abandoned property and did not include claims of this kind. Senator Jackson, in a report on a claim precisely similar to the claim under consideration, states in reference to this point:

"If the military authorities had seized the funds under the act of Congress of March 12, 1863, entitled 'An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States,' the claimant could have resorted to the Court of Claims within the time prescribed by law for relief. The claim does not, however, fall within the provisions of, or originate under, that act. But, as stated by the Supreme Court in the case cited, Planters' Bank *vs.* Union Bank, the order under which the funds were taken possession of was an unauthorized attempt by the military commander to enforce summarily the confiscation acts of 1861 and 1862. (Report No. 103, Forty-eighth Congress, first session.)"

The other case in which relief was granted is that of John W. Franklin, executor of the will of John Armfield, in which a special bill was enacted, which was approved January 14, 1885.

The only other question to be considered is that of laches. We are of opinion that as the claimant petioned the Hon. S. P. Chase, Secretary of the Treasury, and before such time of praying for relief from the Treasury Department had pressed her claim before the Quartermaster and the Secretary of War, who held that they could do nothing, as the funds had passed into the Treasury, she has done all that reasonably could be expected of her, and that the delay in the matter of remedy is not attributable to her.

We therefore report the accompanying bill and recommend that it do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 108.

RELIEF OF THE HEIRS OF WILLIAM PITCHER, ET AL.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Brower, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2280.]

The Committee on War Claims, to whom was referred the bill (H. R. 2280) for the relief of the heirs of William Pitcher and Axel Hayford, and Samuel Otis and George B. Fergusson, report as follows:

The facts out of which this bill for relief arises will be found correctly stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[House Report No. 474, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 787) for the relief of the heirs of William Pitcher, Axel Hayford, Samuel Otis, and George B. Fergusson, having considered the same, respectfully report:

Claimants presented their petition to the Thirty-ninth Congress. It was referred to the Committee on Claims. That committee reported a bill for claimants' relief, which passed the House of Representatives, but was not acted on in the Senate. The report of the committee was not printed, and no copy thereof is accessible.

In the Forty-first Congress a bill was introduced in the Senate for claimants' relief, and was reported adversely from the Senate Committee on War Claims (third session, Forty-first Congress, report No. 324). Since then new and material evidence has been filed on claimants' behalf.

All the testimony is *ex parte*, as in all cases of this kind, but there is no reason to doubt its credibility. The facts disclosed by evidence on file in this claim are as follows:

Charles W. Holt was employed under Capt. S. L. Brown, assistant quartermaster, U. S. Army, as an agent of the Quartermaster's Department, between September 1, 1864, and March 3, 1865. Capt. S. L. Brown was assigned to duty in New York City, as purchasing and shipping quartermaster of forage, and the persons employed by him were specifically engaged upon duties relating to forage, and their employment was authorized by the acts of Congress making appropriations for support of the Army during the fiscal year the services were rendered. (See letter of Quartermaster-General dated May 1, 1886, to Hon. S. L. Milliken, M. C.). The same letter shows that J. B. Fisher, an agent of the Quartermaster's Department, is borne on the reports of Capt. S. L. Brown as paid between September, 1864, and January, 1865, the sum of $1,892.29, for purchasing, shipping, and transporting forage. On September 19, 1864, Charles W. Holt, quartermaster's agent, wrote from Boston, Mass., to William Pitcher, at Belfast, Me., as follows:

"Yours of the 16th is at hand. In reply would say that I answered your first letter (which has been probably miscarried) in words to the following effect: 'There is

little change in the plan of conducting the forage department in New England from what was talked of when you were at my office. It is decided that Mr. Fisher shall have the management of Maine, and I presume he will be ready to make such arrangements with you, in regard to purchases of hay at Belfast, as suggested.' Since having made the above reply to your letter, I have seen Mr. Fisher and spoke to him of the interview with you. He said he should be glad to operate with you. If he has any prejudice toward your partner, he has none toward you, and you will find him ready to make any consistent arrangement for purchasing hay. I returned from New York on Saturday and have no knowledge that the rate of hay in Maine has been fixed at above $18 per ton. Such were the figures given me for all parties, with the exception of Portland. If Mr. Fisher has other orders they have been varied from mine, and I am assured from headquarters that there is no occasion for an increase of rates fixed. I think that if Mr. Fisher has offered $20 per ton, it is only for the time, to supply a temporary demand at Fort Monroe. I would respectfully refer you to Mr. Fisher, who no doubt will be in readiness to make satisfactory arrangements with you for purchasing and delivering hay."

Axel Hayford and William Pitcher swear:

"We were authorized by Mr. Fisher to purchase hay without limit as to quantity, he saying he hoped to receive from the Penobscot Bay and river 5,000 tons, and 3,000 of same to be shipped from Belfast and vicinity or from the territory given us wherein to operate. We were ordered by him not to interfere with the local consumption, but to fill orders from our customers in Maine to prevent competition in the market; he at the same time agreeing that all hay shipped from Belfast for Government should pass through our hands, we to receive a fair compensation for purchasing, storing, and shipping; he, Mr. Fisher, reserving the right to fix the price we should pay for the hay, saying, at the same time, he did not think it would exceed $18 per ton from the teams."

On October 4, 1864, Fisher sent William Pitcher one hundred circulars for distribution among hay-pressers and requests that they have a good circulation, and on October 17, 1864, he wrote from Portland, Me., to Mr. Pitcher as follows:

"I shall be prepared to forward to your place a weigher and inspector as soon as you advise me that you are beginning to receive hay. When I was in your city I promised, provided that I allowed any larger profit to any other party in completing my arrangements, that I would advise you and make the same arrangement with you. I have agreed to allow other parties $22—$2 for buying, handling, etc.—and will allow you the same. Out of that amount will come our charge for half-weighing—whole weighing being 40 cents per ton; half weighing we consider 20 cents—leaving you $1.80 per ton, or $21.80 for the hay. I hope you will report a cargo of hay ready before the week is out."

The testimony shows that claimants were unable to purchase hay at the price authorized by them to pay; that the Beatre Press Company were offering better terms, and on December 7, 1864, J. B. Fisher, signing himself "Q. M. Agent," wrote Pitcher & Hayford at Belfast, Me., from Portland, as follows:

"Allow me to introduce to you Capt. Charles A. Gage, who visits you as my agent. Any information in regard to the operations for Government on your river that you may communicate to him will be appreciated by me."

In the letter above cited from the Quartermaster-General, it is stated that Charles A. Gage was employed by Capt. S. L. Brown, assistant quartermaster, as assistant superintendent of hay, at $100 per month, during the months of December, 1864, and January and February, 1865. The evidence discloses that C. A. Gage authorized claimants to advance the price of hay to $25 per ton, and that within twenty-four hours after receiving such authority they had engaged 1,000 tons of hay at that rate. Gage then requested claimants to secure all the hay as it came to market, even if they were obliged to pay as high as others, and stated that he would obtain authority from New York, and if necessary from the Secretary of War at Washington, to seize the hay bought by the Beatre Press Company and other hay in the vicinity of Belfast stored on speculation. Upon a threat from Gage, on his return to Belfast, after a short absence, the Beatre Press Company sold their hay to Government, and claimants purchased from $25 to $26 per ton without further inflation of price.

A. C. Austin succeeded J. B. Fisher at Portland as agent for the Quartermaster's Department, and in his letters of March 15 and April 29, 1865, he specifically authorizes claimants to pay not to exceed $27 per ton for hay.

The evidence further discloses that owing to a refusal of the Government to pay "going prices" on transportation, transports were difficult to obtain, and that hay on hand and stored by claimants, which they had reported as ready for shipment, was not shipped for that and various other reasons beyond claimants' control; that they bought hay and held it in store up to the time orders came to cease shipping "until further orders," and no longer; that the war closed about the same date, and claimants had on hand of hay thus purchased for the Government upon contract with its authorized agents 395 tons, which the Government neglected and refused to take off

claimants' hands, which was subsequently disposed of by claimants at an actual loss to them.

Eliminating from the claim of William Pitcher and Axel Hayford all demands for interest, loss, and expenses of every nature, it is found that the difference between the purchase price to them ($26.80 per ton) and the price they were enabled to realize on the hay ($15 per ton) is $11.80 per ton lost on each and every ton the Government left on their hands. Three hundred and ninety-five tons, at $11.80 per ton amounts to the sum of $4,661, due to these claimants.

The facts as to Samuel Otis and George B. Fergusson are the same as those in the case of Pitcher and Hayford. They had left on their hands 300 tons of hay, 66 tons of which they disposed of and retained at the time of their sworn statement at a loss to them of $11.80 per ton, making a loss of $778.80, and 334 tons were disposed of at a loss of $10.47 per ton, making loss on this lot $2,449.98, or a total of $3,228.78.

The evidence further discloses that the Government directed the purchase of all the hay obtainable; that hay was held by sellers in expectation of an advance, and a threat of seizure coupled with an advance of price only secured hay to the Government. Had the war continued the wisdom of the purchase would have been vindicated. The exact fact was, the exigencies of the public service demanded the hay to be on hand and subject to immediate delivery. Purchase upon advertised proposals was wholly impracticable, and the exact condition of affairs provided for by law as authorizing purchases in open market then existed. The agents of the Government who contracted with claimants were legally authorized to contract and actually did contract as claimed by claimants, and the Government is bound by the acts of such agents, and can not in law and good conscience escape from indemnifying claimants against their loss, resulting from its refusal to make good its contract.

The committee therefore report the bill back without amendment and recommend that it do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 109.

W. R. ALBRIGHT.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Brower, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1160.]

The Committee on War Claims, to whom was referred the bill (H. R. 1160) for the relief of W. R. Albright, report as follows:

This is a claim for property taken by the order of General Kilpatrick for the use of the United States military forces invading North Carolina in April, 1865.

The facts are that W. R. Albright, of Alamance County, N. C., was a loyal man, and that the officers of General Kilpatrick's command took from him, in April, 1865, for military purposes, property as follows:

100 bushels of corn	$100
20 barrels of flour	200
300 bushels of oats	100
3,000 bundles of fodder	30
4,000 pounds of hay	40
500 pounds of bacon	100
15 hogs	75
10,000 rails	300
10 cords of wood	30
5,000 pounds of cotton	1,500
1 gray mule	200
Total	2,675

These facts are sustained by competent and credible testimony.

Your committee therefore report back the bill and recommend its passage.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 110.

RELIEF OF RANDOLPH WESSON.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ENLOE, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 1607.]

The Committee on War Claims, to whom was referred House bill 1607, submit the following report:

Randolph Wesson was a soldier in the United States Army during the late war, and while he was away from home in the service of his country, the quartermaster of the Seventh Illinois Volunteer Infantry went to the home of Mr. Wesson and took from the father of claimant one mule valued at $150, for which he gave his receipt to H. H. Wesson, claimant's father, reciting the fact that the property was taken for the use of the Army. After the war claimant placed his claim in the hands of General E. A. O'Neal, of Alabama, for collection, but General O'Neal overlooked the claim in the excitement of the reconstruction period, and was then elected governor of the State, and left his law business in the hands of his son. The claim was never filed before the Quartermaster-General, and the receipt was not found until sometime in the year 1887.

The failure to prosecute the claim was not the fault of the claimant. The proof of the taking and of the ownership of the property is clear, and claimant's loyalty is established by his military service. The committee therefore recommend the passage of House bill 1607.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 111.

CLAIMS FOR CHURCH AND SCHOOL BUILDINGS.

February 15, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Enloe, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 7009.]

Your committee have considered House of Representatives bill No. 5169, and recommend the adoption of the accompanying substitute. The substitute provides that the Secretary of War shall cause to be investigated and provide for the payment of all claims for the use and occupation of church and school buildings and grounds for Government purposes by the United States military authorities during the late war, and all claims for damages resulting from the appropriation to Government use of any of the furnishings or materials in said class of buildings.

The bill provides that the Quartermaster-General shall proceed to investigate claims of the character mentioned in the same manner, and they shall take the same course as claims arising under what is known as the Fourth of July claims act; that is, he shall report the amount due in each case, and certify the same to the Third Auditor of the Treasury for payment, who will report them to Congress for appropriations. The testimony now on file may be used as evidence in the consideration of these claims. This bill is based on numerous precedents; among others, attention is invited to the following: The first report of the Commissioners of Claims report that when buildings are torn down, if the materials are taken to erect other buildings for the use of the Army, such materials thereby become supplies, and their value as materials for the purpose for which they are used is paid to the owners. In 1871 an act was passed to pay the Kentucky University for buildings destroyed. The buildings were taken by military authority, and while in the hands of the authorities of the Government were accidentally destroyed. That was a Senate bill, and was approved by President Grant.

The Madison Female Institute, of Richmond, Ky., was paid upon an allowance by the Quartermaster-General, for the use and occupation of the buildings and grounds for Government purposes. The Smithland (Ky.) Baptist Church; the St. Joseph Commercial College, St. Joseph, Mo., the Protestant Episcopal Seminary, of Alexandria, Va., and St. Peter's and St. Paul's Catholic Churches, at Chattanooga, were paid for use and occupation, and for materials and furnishings used by the army for Government purposes, by various acts passed during the sessions of the Fiftieth Congress.

It has been wisely held that a corporate body, such as a school or college or church or a body representing the educational and religious in-

terests of a community, could not be held to be disloyal, and all the legislation cited proceeds upon that idea. As there are a number of these claims pending before Congress the committee are of opinion that justice to the Government and to the claimants is better assured in providing, as this bill does, a tribunal where all claims of the same character may be legally investigated and judicially determined, and they therefore recommend the adoption of the accompanying substitute for H. R. bill 5169, and that the bill as amended do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 112.

RELIEF OF CHARLES MURPHY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Mansur, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 2232.]

The Committee on Claims, to whom was referred the bill (H. R. 2232) for the relief of Charles Murphy, have carefully examined the same, and report that it was favorably reported in the Senate, Fiftieth Congress, first session, by Senator Faulkner (see Senate Report 604), that in same Congress and session it was favorably reported by Mr, Mansur, from the Committee on Claims, who adopted the Senate report; and the committee being still well satisfied with said report abide by it still, and report the bill favorably with an amendment as follows, to wit: Strike out in lines 14 and 15 the words "and with proper interest from the time his cause of action accrued."

The Senate report adopted is as follows:

Senate Report No. 604, Fiftieth Congress, first session.

IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1888.—Ordered to be printed.

Mr. FAULKNER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 661.]

The Committee on Claims, to whom was referred the bill (S. 661) for the relief of Charles Murphy, have carefully examined the same, and report:

On the 13th of August, 1872, the Government commenced to excavate a pit for the dry-dock at Mare Island, Cal., prosecuting the work by agents of the Government. Eighteen thousand nine hundred cubic yards of earth was excavated, when it was determined to complete the pit by letting the work under contract. On the 14th of June, 1873, advertisements for proposals were published, and on the 18th of July, 1873, a contract was entered into with the claimant, Charles Murphy, for the excavation of said pit. He commenced the work on the 22d of the same month and prosecuted it until the 5th of September, 1874, when, under a provision of the contract, the Government took possession of the work and annulled his contract. The claimant presented to the Navy Department the following itemized bill, except the last item therein, to-wit:

For damages, loss of time, expenses, and for losses on property, as above	$45,000
For excavating 62,907 cubic yards, at 74 cents per yard	46,551
For excavating 15,000 cubic yards, at 74 cents per yard, of slides	11,100
For constructing dam	350
For extra labor and expense by being prohibited the use of gunpowder in blasting	17,848
For difference in place of dumping earth from pit	6,500
For filling north wing of dam	350
For extra expense in extending head of pit	1,500
For delays by Government to exclude tide-water, in limiting place of working to less than whole site, and other obstructions	20,000
For damages, loss of time, expenses, and for losses on property, as above	45,000
Total	149,199

And your petitioner further represents that upon application to the proper authorities of the United States Government he was by them paid (after long and unnecessary delays, imposing on him heavy expenses) on account, as follows, to wit:

For excavating 62,907 cubic yards, at 74 cents per yard	$46,551
For excavating 9,493 cubic yards, at 74 cents per yard, slides	7,024
For constructing dam	350
For extra transportation of earth to place of dumping	2,835
For injuries to railroad track at place of dumping	500
For neglect to build dam to keep out tide-water	2,000
Total paid	59,260

This claim was referred by the Secretary of the Navy to Admiral John Rodgers, commandant of the navy-yard at San Francisco, without, how-

ever, the knowledge or assent of Murphy. In his report, Admiral Rodgers recommended the payment to the claimant of $5,685, which was paid on the 9th of March, 1877. The claimant filed his petition in the Court of Claims on the 19th of March, 1877, setting out the following cause of action:

[In the Court of Claims of the United States, No. 11,563.—Filed March 19, 1877.—J. R. Charles Murphy *vs.* The United States.]

PETITION.

The petition of Charles Murphy, of Vallejo, county of Solano and State of California, respectfully represents:

That on the 18th day of July, 1873, he entered into a contract with John Rodgers, rear-admiral in the United States Navy, and commandant of the navy-yard at Mare Island, California, representing the Navy Department of the United States, by which he, the said Murphy, undertook to do and perform certain works in excavating the earth at the United States navy-yard at Mare Island, in the said State of California, for the purpose of constructing a dry-dock, and for which he, the said petitioner, was to be paid by the United States, as per said contract, at the rate of seventy-four cents per cubic yard of all the earth to be so removed, and $687½ for every lineal foot of tunneling. And the said contract was in all respects regularly and lawfully entered into, and was thereupon reduced to writing by the parties thereto, as required by the laws of the United States in all such cases, and signed by the said Charles Murphy, as principal, and Dwight Spencer, Nathan Coombs, and William Wilson Stillwagon, as sureties, parties of the first part, and the United States by John Rodgers, rear-admiral in the United States Navy, and commandant of the navy-yard at Mare Island, California, acting under authority of the Navy Department and in its behalf, party of the second part; which written contract and printed specifications attached thereto are herewith filed, marked Exhibit A, and made a part of this petition.

And the petitioner avers that within the period of ten days from and after signing of the contract as aforesaid, he, the petitioner, was ready and fully prepared to go to work in accordance with the terms of said contract, and was very anxious to do so, in order to complete it before the setting in of the rainy season, which usually commences there the latter part of the month of November.

And your petitioner further represents and claims that it was the duty of the officers of the Government in charge of said works to put him in possession of all the ground necessary to carry on the work of excavating the site of said dry-dock clear of all obstructions, and to protect him, his laborers, work animals, and property of all kinds, as also to assign a place to deposit the earth excavated, within a reasonable distance from the work, and in all respects to afford him every reasonable facility to carry on the work; and that if such provisions are not expressed in so many words in said written contract, they are a necessary implication for its faithful performance.

And your petitioner further represents that he had a right to carry on said excavations in any way he might deem the most expeditious and economical to comply with the terms of the contract, either by using picks, shovels, ploughs, or blasting with gunpowder.

And your petitioner further represents that the officers and agents of the Government, as aforesaid, did not, when he was ready, or at any time thereafter, put him in possession of all the ground to be excavated, so that he might have sufficient room to carry on the work to the best advantage, so as to enable him to complete the work within the time required by the contract, but he was limited to a small portion of the premises at a time, greatly to his disadvantage; nor was the pit in which the work had to be done kept free from the waters of the bay (of Napa, near which it was situated), as it should have been done by the Government; nor was he allowed after a time to use gunpowder in blasting, although it was necessary, but was compelled, by the officers and agents in charge, to use picks in excavating, which was a much more tedious and expensive method; nor was he allowed, when removing the earth, to deposit or dump it at a place within a reasonable distance from the place of the excavation, although there was plenty of room to do so, but he was compelled to transport the same a long distance, over marshy ground, and at great expense, and the plans of the forms of the excavation were changed, to his great damage; and he was in like manner subjected to divers and various other charges, limitations, restrictions, exactions, obstructions, and difficulties, all of which subjected him to great loss in time and money, and greatly to his injury.

And your petitioner further represents that in consequence of the failure of the Government officers and agents in charge as aforesaid to perform that which of right they should have done or permitted to have been done under the contract, he was subjected to great and extraordinary trouble, expense, and loss of time, for which he,

your petitioner, ought and of right can not be made chargeable, but which is justly chargeable against the defendants.

And your petitioner further represents that he was always and at all times anxious to fulfill his part of the contract, and exerted himself to the utmost to do so, even under the disadvantageous circumstances in which he was placed by the Government authorities, and he continued the work as best he could under the unjust exactions, limitations, and restrictions imposed on him by those in authority, because he had invested a very large sum of money in machinery, horses, mules, oxen, implements, and other things necessary to carry on the work, much of which property was of little value to him for any other purpose, and it could be sold only at a great reduction on its real value, and on what he had paid for it.

And your petitioner further represents that he did perform a great deal of work on the premises, commencing under and by virtue of said contract on or about the 22d day of July, 1873, and continuing under the circumstances above set forth until on or about the 5th day of September, 1874, when it was formally annulled by the defendants. During this period of time this petitioner had excavated and removed from the site of the said dry-dock, as hereinbefore described (62,907) sixty-two thousand nine hundred and seven cubic yards of earth from the body of earth originally intended to be taken out, according to the measurement of the United States assistant engineer in charge.

And your petitioner further avers and represents that in the prosecution of the work he was compelled to remove about (15,000) fifteen thousand cubic yards of earth in addition to the foregoing, made necessary by the severity of the winter rains saturating the banks; by the swelling of the bottom of the pit, which displaced the beams used for shoring, and by the undermining of the banks by orders of the authorities, all of which caused large bodies of earth to slide into the pit, but which was from no fault of this petitioner.

And your petitioner further represents that in consequence of these aforementioned acts and others, of the Government authorities aforesaid, against which he protested at the time, his credit was greatly injured, and his property was levied on by the sheriff of the county and sold at ruinous prices to satisfy debts incurred by this petitioner in the purchase of materials and in the employment of laborers to carry on the work.

Wherefore your petitioner respectfully represents that in view of the premises he claims that he was and is justly entitled to compensation from the Government of the United States as follows, to wit:

For excavating 62,907 cubic yards, at 74c. per yd	$46,551
For excavating 15,000 cubic yards, at 74c. per yd. of slides	11,100
For constructing dam	350
For extra labor and expense by being prohibited the use of gunpowder in blasting	17,848
For difference in place of dumping earth from pit	6,500
For filling north wing of dam	350
For extra expense in extending head of pit	1,500
For delays by Government to exclude tide water, in limiting place of working to less than whole site, and other obstructions	20,000
For damages, loss of time, expenses, and for losses on property, as above	45,000
Total	149,199

Amounting in all to one hundred and forty-nine thousand one hundred and ninety-nine dollars.

And your petitioner further represents that upon application to the proper authorities of the United States Government he was by them paid (after long and unnecessary delays, imposing on him heavy expenses), on account as follows, to wit:

For excavating 62,907 cubic yards, at 74c. per yd	$46,551
For excavating 9,493 cubic yards, at 74c. per yd., slides	7,024
For constructing dam	350
For extra transportation of earth to place of dumping	2,835
For injuries to railroad track at place of dumping	500
For neglect to build dam to keep out tide water	2,000
Total paid	59,260

Making a total of fifty-nine thousand two hundred and sixty dollars paid on account; and, though often requested by your petitioner to do so, the defendants have wrongfully refused and neglected to pay him the balance on said account, to his great damage and injury; wherefore he sues, and prays judgment therefor in the amount of eighty-nine thousand nine hundred and thirty-nine dollars, as hereinbefore set forth, and for such other and further relief as to this honorable court may seem just and proper.

CHARLES MURPHY.

Charles Murphy, being duly sworn, deposeth and saith, that he is the claimant named in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that he is justly entitled to the amounts therein, as claimed, from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

CHARLES MURPHY.

Sworn and subscribed before me, at the city and county of Washington, District of Columbia, this nineteenth day of March, A. D. 1877.

[SEAL.] N. CALLAN,
Notary Public.

Claimant's post-office address is Charles Murphy, Vallejo, Solano County, Cal.
Claimant's attorney is James W. Denver, Washington, D. C.

EXHIBIT A.

MURPHY'S CONTRACT.

This contract, made and entered into this 18th day of July, one thousand eight hundred and seventy-three, between Charles Murphy, of Vallejo, county of Solano and State of California, as principal, and Dwight Spencer, Nathan Coombs, and William W. Stellwagon, all of Napa, county of Napa and State aforesaid, as sureties, parties of the first part, and the United States, by John Rodgers, rear-admiral in the United States Navy and commandant at the navy-yards at Mare Island, California, acting under the authority of the Navy Department and in its behalf, party of the second part—

Witnesseth, That the said parties of the first part do hereby contract and engage with the said United States as follows, viz: That in consideration of the payments hereinafter mentioned, the said parties of the first part agree to furnish at their own cost and expense all the labor, materials, teams, provender, implements, and tools of every description required, and within ten days from the signing and execution of this contract to undertake, with a force of not less than ten horses and carts (with the required workmen), or an equivalent thereto, the work of excavating, tunneling, and shoring on the site of the stone dry-dock now in course of building in the said navy-yard, the said work to be vigorously carried on and completed according to the accompanying specifications which form a part of this contract, and to the drawings of the said dry-dock, as they may be furnished from time to time by the superintendent thereof; and the said parties of the first part do agree to perform all the said work in a pefectly secure and workmanlike manner, and according to the nature and requirements of the dry-dock works that are hereafter intended to be constructed on said site and in the excavation to be made, to the satisfaction and approval of the commandant of the navy-yard, and in accordance with the said specifications and drawings as aforesaid, and all things incident thereto, which may become necessary according to the intent and meaning thereof, although not specifically stated or described by (but which may be inferred from) the said specifications and drawings, the same generally to illustrate each other. And should it appear that any of the works hereby intended to be done, or matters relative thereto, are not fully detailed or explained in the said specifications or drawings, the said parties of the first part shall apply to the superintendent of the dry-dock works for such further detailed explanation, and perform his orders as part of the contract.

In case of delay by the said parties of the first part in providing and delivering the requisite materials, or in the advancement of the above-named works, or of a deficiency of workmen, as well in respect to dismissing any unskillful workman or workmen, or for misconduct, the commandant shall be at liberty, after a written notice of three days to the foreman or building agent, or to the aforesaid principal, to provide, at the expense of said parties of the first part, all such materials, and employ an increased number or such number of workmen, at such wages as the said commandant shall deem proper; and the cost and charges incurred shall be retained out of the contract amount, or balance thereof, which may remain due, or to be recoverable as liquidated damages. The said party of the second part to be at liberty to make any deviation from or alteration in the plan, form, construction, detail, and execution described by the drawings and specifications, without invalidating or rendering void the contract.

The said parties of the first part, their foreman, or building agent, upon receiving a written order from the superintendent for that purpose, shall suspend the working and proceeding with such part or portions of work, to be specified in such order, for the due and proper execution of other work or works connected therewith, and in case of inclemency of weather, and for the prevention, as far as possible, from the flow of rain-fall or surface water into the excavation, he shall cause suitable ditches to be cut for the purpose of leading such water away from the works.

The said parties of the first part further agree that all the excavation and tunneling of the said dry-dock site with all the necessary shoring and timbering as aforesaid shall be completed within one hundred and twenty (120) days from the date of this contract, and the said parties of the first part further agree that the said party of the second part shall be, and hereby is, authorized to deduct and retain, out of any money which may become due to the parties of the first part, the sum of one hundred (100.00) dollars per day for each and every day, Sundays and holidays only excepted, that the said works may remain incomplete and unfinished beyond the time herein stipulated for its completion. And the said parties of the first part do further engage and contract, that no member of Congress, officer of the Navy, or any person holding any office or appointment under the Navy Department shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. And it is hereby expressly provided, and this contract is upon this express condition, that if any person above named shall be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the parties of the first part shall in any respect fail to perform this contract on their part, the same may be, at the option of the Navy Department, declared null and void, without affecting their right to recover for defaults which may have occurred.

And the party of the second part hereby contracts and agrees that for the full and entire completion of this contract to the satisfaction of the party of the second part, there shall be paid to the parties of the first part by the parties of the second part the sum of seventy-four cents United States currency for each and every cubic yard of material excavated as aforesaid, and measured in the excavation, and six dollars and eighty-seven and one-half cents United States currency for each and every lineal foot of tunneling performed as aforesaid, the said sums to be paid in the following manner: That is to say, when in the opinion of the engineer of the dry-dock one-fourth of the work is satisfactorily completed he shall cause the same to be measured, and give his certificate for the number of cubic yards excavated, and the extent of tunneling performed, upon which certificate, triplicate approved bills upon the Navy pay office at San Francisco shall be made for the said one-fourth, and eighty per centum of the amount of said bills shall be paid by the disbursing paymaster within thirty days, the remaining twenty per centum being withheld from the amount of all payments due on account of this contract, and not in any event to be paid except specially authorized by the Secretary of the Navy, until this contract shall be in all respects complied with by the parties of the first part. In like manner on the completion of one-half, three-quarters, and the whole of the entire excavation, tunneling, shoring, etc., bills shall be made and payable, respectively, for the amounts of work performed.

It is further understood and agreed that in case the said parties of the first part shall fail to perform all or any of the convenants herein provided to be performed on their part, the Navy Department shall have the power to annul this contract without loss or damage to the Government, and in case of failure aforesaid, or in completing the said work at the time specified, the said Department shall have power to enter upon and complete the said work at the expense of the said parties of the first part.

CHARLES MURPHY.
DWIGHT SPENCER.
NATHAN COOMBS.
WILLIAM WILSON STILLWAGON.

JAMES DONNELLY.

JOHN RODGERS,
Rear-Adm'l, U. S. N., and Com'd't Navy-Yard.

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE FIFTH DISTRICT CALIFORNIA,
Napa City, July 16, 1873.

I hereby certify that by the records of my office, and from personal knowledge, the sureties to the within contract, in default of the performance of the obligations by the principal, are, by pecuniary ability, fully able to perform the requirements of the same.

[SEAL.]

W. C. S. SMITH,
Collector 5th Dist. California.

SPECIFICATION.

For excavating the site of the dry-dock now being constructed at the navy-yard, Mare Island, California, and general conditions on which the work is to be executed.

1. The whole of the ground within the limits of the proposed dock and as may be necessary for its working space, roads, etc., must be taken out to the required widths and depths as may be directed by the civil engineer in charge, and in the order to be prescribed by him.

2. The bottom of the trenches or cuttings must be carefully leveled and formed to receive the masonry or whatever work may be required to be placed therein. All roadways or approaches and all spaces or areas to be left around the dock and which may require to be excavated under this contract must be carefully graded to such grades as the superintending engineer may direct.

3. The sides of the excavation must be shored and timbered in such manner as the contractor may think right and on his own responsibility, or slopes may be formed for reducing the quantity of timber shoring and side planking, but the excavation to the width and depths shown on the drawing, or as may be required by the masonry of the dock, will only be paid for.

4. The sufficiency of the shoring, timbering, and of all the means employed by the contractor for excavation the earth work must rest with him and he must take all the responsibility of all failures from whatever cause arising, immediately remedying them at his own cost.

5. The soil excavated or dredged from the site of the work must be removed and deposited at such point or points on the navy-yard as may be directed by the superintending engineer, and in such manner and order, and at such grades as he may prescribe. The contractor is to reserve such excavated material as the superintending engineer shall deem suitable for puddling and filling the coffer-dam, and shall deposit the same therein, carefully preparing the said material for this portion of the work and placing it in the dam as he may be directed. In like manner he shall reserve suitable material for the embankment within the inclosure of the coffer-dam, and deposit the same as he may be directed by the superintending engineer.

6. In case tunneling shall be required for the drainage culverts of the dock, the contractor is to perform the same according to the forms and dimensions as laid down on the drawings, and so as to admit of the proper construction of the masonry of said culverts. Wherever necessary he is to provide suitable materials and perform all the work required for timbering or shoring said tunnels. The excavated material from the tunnels is to be disposed of in the same general manner as prescribed for the above-mentioned portions of the dock.

7. All timber, clay, and other materials used by the contractor for dams and other temporary purposes connected with the excavation and the tunneling, must be removed by him at his own cost and charge, but no shoring or timbering necessary to sustain the banks or tunnels shall be removed by him without written authority from the superintending engineer of the work.

8. The expense of dams, ditches, and the means of leading water to the draining wells must be borne by the contractor, as far as the draining of his own work is concerned, but the Government is to provide and maintain the operation of all pumping machinery necessary for the drainage of the work at its own cost and expense.

9. All the labor, materials, teams, provender, implements, and tools of every description necessary for the excavation and tunneling of the said work, and shoring and timbering the same, including all the necessary means for removing, depositing, and grading the excavated materials, excepting the pumping machinery and its maintenance, as aforesaid, are to be provided by the contractor at his own cost and charge.

10. The excavation will be paid for at the stipulated contract price per cubic yard measured in the cuts, and will include all removal, depositing, filling, and grading of the materials, and all work connected therewith. The tunneling, including all shoring, timbering, and removal of material, filling, and grading with the same, will be paid for at the stipulated contract price per lineal foot.

The above is subject to any changes that may be made by the Bureau of Yards and Docks before the award of contract.

At the December term, 1878, Davis, J., delivered the opinion of the court, dismissing the petition of the claimant after first passing upon eighteen of the questions involved, the most material and vital being that the acceptance of the $5,685 was "clearly an accord and satisfaction of a disputed claim, which closes the door to litigation." A motion for a new trial was entered at the same term, and at the December term, 1879, the court entered an order "that the findings of fact be set aside so far as to authorize either party to offer, as hereinafter provided, further proof touching the circumstances under which the said sum of $5,685, set forth in finding eighteen, was paid to the claimant, and receipted for by him, but no further."

The evidence offered to the court on the motion for a new trial was the proof that the receipt signed by the claimant was the ordinary receipt issued by the Department for current payments, and was similar

to other receipts signed by him for payments on account. The voucher and receipt are as follows:

[Original.]

United States Navy Department, Bureau of Yards and Docks, to Charles Murphy, Dr.

(Appropriation: Navy-yard, Mare Island, 1876–77.)

1817, date of award, Jan'y 31. For amount awarded by the commandant of navy-yard at Mare Island, Cal'a, as damages arising out of contract for excavating the "dry-dock pit" at that navy-yard, and ordered paid by the Hon. Sec't'y of the Navy, March 3d, 1877	$5,685
Total	5,685

BUREAU OF YARDS AND DOCKS,
March 3d, 1877.

Approved for five thousand six hundred and eighty-five dollars, payable by the Navy paymaster at Washington, D. C.

J. C. HOWELL,
Chief of Bureau.

NAVY PAYMASTER'S OFFICE,
Wash., D. C., Mar. 9, 1877.

Received of W. W. Williams, paymaster, U. S. N., fifty-six hund. and eighty-five dollars in full of the above bill.

CHARLES MURPHY.

The circumstances under which that payment was made and accepted by Mr. Murphy was proven by the affidavits of A. E. Merritt and D. J. Partello, clerks in the Navy Department. These affidavits are as follows:

AFFIDAVIT OF A. E. MERRITT.

A. E. MERRITT, of the city of Washington, District of Columbia, being duly sworn, deposeth and sayeth—

That he is acquainted with one Charles Murphy, of Vallejo, California; that the said Charles Murphy, in the year 1877, presented himself at the Bureau of Yards and Docks asking for an adjustment and settlement of his accounts under contract with Bureau for excavating of a dry-dock pit at Mare Island navy-yard, California; that the matter was duly referred to the Hon. Secretary of the Navy, who sent the papers to the commandant at the navy-yard, Admiral John Rodgers, with directions to report fully, and recommend a basis of settlement; that the said commandant transmitted to the Hon. Secretary of the Navy his report, and recommended, in the nature of an award, a payment to Mr. Murphy of $5,685; that the said report was indorsed by the Hon. Secretary and referred to the Bureau to pay the amount stated out of any balance to its credit available for that purpose. Mr. Murphy, pending these transactions, had called several times at the Bureau and had interviews with the chief, Admiral John C. Howell, upon the subject.

Admiral Howell was opposed to the payment of any amount to Mr. Murphy, appearing to have a dislike for the claimant and his claim, some unpleasant words having passed between them on one or two occasions. For the sake of peace and quietness in the adjustment of the matter and payment as directed by Hon. Secretary, Mr. Murphy was advised to remain away from the Bureau; that the matter would be adjusted as speedily as possible, and by leaving his address, as he did, the papers or vouchers, if approved, would be sent to his domicile.

The chief, Admiral Howell, directed approved bills to be made for the amount awarded as directed by the Secretary.

These bills were made upon regular Bureau forms, in triplicate, and in the manner that current payments were made, no special instructions being given by the Secretary's indorsement except to pay amount named.

After the approval by the chief they were taken to the residence of Mr. Charles Murphy, on Thirteenth street, near G, by Mr. Partello, one of the clerks attached to the Bureau, who delivered them in person to the claimant.

The amount was subsequently drawn for in regular manner through the Navy pay office, Washington, D. C., payment being made out of the appropriations for dry-dock *navy-yard, Mare Island*, California.

The said Charles Murphy, during these proceedings, expressed himself as not satisfied with the small amount paid or allowed him, and expressed a determination to apply to the Court of Claims for redress; which intention was also expressed in the presence of Admiral Howell, who advised him if not satisfied and further relief to apply to said court. Mr. Murphy strongly protested against the final settlement of his accounts and was informed the payment made was in the ordinary manner on usual forms and would not prevent his appeal to the courts or Congress for further relief.

A. E. MERRITT.

Subscribed and sworn to before me this twenty-first day of July, A. D. 1882.

D. CORRIGAN, *Notary Public.*

The above affidavit is by me reacknowledged this February 15, 1884.

AUGUSTUS E. MERRITT.

Subscribed and sworn to before me this 15th February, 1884.
Witness my hand and seal.
[SEAL.] JOHN TWEEDALE, *Notary Public.*

AFFIDAVIT OF D. J. PARTELLO.

D. J. PARTELLO, of the city of Washington and District of Columbia, being duly sworn, deposeth and sayeth:

That he is acquainted with one Charles Murphy, of Vallejo, California. That the said Charles Murphy, in the year 1877, presented himself at the Navy Department, Bureau of Yards and Docks, for adjustment of his accounts under contract with the Bureau for excavating a dry-dock pit at the navy-yard at Mare Island, California.

Upon Department's direction the commandant at Mare Island, Admiral John Rodgers, reported the facts in the case and recommended an amount of $5,685 to Mr. Murphy; the papers having been indorsed by the Hon. Secretary of the Navy were referred by the chief of the Bureau through the chief clerk to me to have the necessary vouchers made out for payment. There were to me no instructions except to pay out of any money available for that purpose the sum named therein.

I proceeded to make out the bills in the usual manner upon Bureau forms and the same as all current payments were made. It was, as I understood it, a payment of so much money as stated in the report. I had no direction otherwise.

I remember of bad feeling and trouble between the chief, Admiral John C. Howell, and Mr. Murphy, and know the chief, Admiral Howell, was opposed to the claim and appeared to dislike the claimant very much. I did not hear fully what passed between them.

Mr. Murphy was advised to absent himself for reasons given, and that his papers, when adjusted and prepared, would be sent him. After making all the vouchers they were approved by the chief, and also by the Sect. of the Navy, and came back to me as satisfactory in form. As the papers were valuable, it was thought best that I should deliver them, which I did at the door of Mr. Murphy's residence, 13 street, near G, which I was directed to do by the chief of the Bureau.

Mr. Murphy asked me what condition the papers were in. I asked him to examine them and see; I explained to him as best I could the form of payment, and that it was in the usual manner and as daily current bills were paid. He asked me as to final receipt, protesting against signing such receipt, and was informed the payment was in the ordinary manner, and would not prevent his appeal to the courts or to Congress for further relief if not satisfactory.

The bills came to me through the Navy pay office, drawn for in the usual manner, and were paid, one copy of the vouchers being now on the files of the Bureau from appropriations of navy-yard, Mare Island, dry-dock.

D. J. PARTELLO.

Subscribed and sworn to before me this twenty-first day of July, A. D. 1882.

D. CORRIGAN, *Notary Public.*

This affidavit reacknowledged by me this 15th February, 1884.

DWIGHT J. PARTELLO.

Subscribed and sworn to before me this 15th February, 1884.
Witness my hand and seal.
[SEAL.] WM. L. FINLEY, *Notary Public.*

On the 20th of March, 1880, Davis, J., delivered the opinion of the court, overruling the motion for a new trial and dismissing the petition. From this judgment the claimant appealed, and at the October term, 1881, the Supreme Court affirmed the decision of the Court of Claims. The decision is brief and in the following words:

DECISION OF THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1881.

[Appeal from the Court of Claims. Charles Murphy, appellant, vs. The United States. No. 75.]

Mr. Chief Justice Waite delivered the opinion of the court:

The judgment in this case is affirmed. We are clearly of the opinion that the acceptance by the claimant, without objection, of the amount allowed by the Secretary of the Navy in his adjustment of the account presented to him was equivalent to a final settlement and compromise of all the items of the present claim included in that account. There is nothing in the findings of the court below to warrant a judgment in favor of the claimant upon the only item included in the petition in this case, which was not mentioned specifically in the account presented to the Secretary of the Navy and passed on by him in the adjustment he made.

Affirmed.

The claimant, having exhausted his remedies before the courts, appealed to the Forty-seventh Congress for relief. No action, however, appears to have been taken in his case. At the Forty-eighth Congress he again applied for relief. The Committee on Claims of the House of Representatives on the 1st of April, 1884, submitted a unanimous report, recommending the payment to the claimant of the sum of $42,834, and a minority of the committee further recommended that the claimant be paid, in addition, the sum of $49,732 on account of damages incurred; the two sums aggregating $92,566. The Senate committee, however, at the same session, reported the claim adversely, basing its action on the judgment of the Court of Claims, affirmed by the Supreme Court.

Learning of this action by the Committee on Claims of the Senate, bills were again introduced similar to the one now under consideration, granting a retrial to the claimant, with the right to either party to appeal on the whole record. On February 4, 1885, the Senate committee reported this bill adversely, notwithstanding the fact that the House Committee on Claims had unanimously reported the bill favorably.

This is a brief history of this case prior to the introduction of Senate bill 661, in the Fiftieth Congress. The papers in this case are very voluminous, both as to documentary and oral testimony. To satisfactorily digest this evidence and to apply it to the contract entered into between the parties and to the numerous questions of dispute would be foreign to the province and purposes for which this committee was created. This should only be done by a judicial tribunal where both parties could be represented, and the weight, competency, and materiality of the evidence offered, and the principles of law which should govern be the subject of discussion by counsel representing the parties in interest.

The testimony, however, which is important and material in determining some of the vital questions involved in the consideration of the relief asked by this bill, has been carefully analyzed by your committee, with an earnest desire to reach a conclusion which would be just to the parties to be affected by their action. If it is clear that injustice has been done to the claimant by the findings of the Court of Claims, or should the committee be satisfied that, by reason of a mere technical ruling, the Supreme Court has been denied the opportunity to pass upon the merits of the case, it would be harsh treatment on the part of

Congress to shut the door of relief and refuse to the claimant an opportunity of having the facts and the law reviewed by the court of last resort.

The following are some of the numerous findings of the Court of Claims: That under the terms of the contract between the parties Murphy was to complete the work of excavation in one hundred and twenty days; that it was the duty of the Government, at its cost, to keep the pit free from water; that the contractor had to build a coffer-dam in the middle of the excavation 8 or 9 feet high to protect his workmen; that the coffer-dam built by the Government was too weak to resist the pressure of the tide, if relieved of the pressure of the water in the pit; that if the Government had fulfilled its obligations and kept the pit dry the claimant could have completed his work within the period specified in the contract, whereas by its default his work covered a period of four hundred and twenty days; that this default upon the part of the Government delayed the work until the wet season, which interfered seriously with its prosecution; that he was prohibited by the engineer, without sufficient cause, from using powder in excavating, which increased the cost 25 cents per cubic yard.

Although the court ascertained by their findings that these numerous sources of damage resulted from the default of the Government in performing the obligations imposed upon it by the contract, and with the fact in proof before it that Admiral Rodgers, in the recommendation which he made, only took into consideration three of the items of damages mentioned, yet they rejected *in toto* the claim for damages caused by the prohibition in the use of powder, which the court found increased the cost 25 cents per cubic yard, and failed to ascertain any amount of damage by reason of this breach of contract upon the part of the Government, but rested the justice of its conclusion, in dismissing the petition, on what it designates in its opinion "an accord and satisfaction of a disputed claim, which closes the door to litigation." The decision of the court upon this vital question, which, if correct, disposes of the entire case, demands of the committee, in the interest of justice, that it should look carefully into the testimony bearing upon this question to ascertain, not whether the opinion of the court is of doubtful propriety, but whether in fact there is any evidence to justify the conclusion reached. After a careful and painstaking examination of the evidence presented to the court in support of the motion for a new trial, we are unable to concur in the conclusion reached by that tribunal:

> That the Secretary authorized the payment only on condition that it should close the controversy, and that the claimant knew this, and with great reluctance and some declarations to outside persons that he would not do so, did accept this payment on those terms.

After the most critical examination of the evidence found in the papers, the committee has been unable to ascertain testimony on which this finding of the court must rest, unless the court was of the opinion that the conclusion reached by Admiral Rodgers, on the *ex-parte* reference to him, the order of the Secretery to pay the amount that he recommended, the voucher and receipt drawn in the usual form of current vouchers and receipts were sufficient facts to justify its conclusion. Certainly these facts can not be appealed to to prove that the payment was made "only on condition that it should close the controversy." Nor do they even tend to show "that the claimant knew this." Nor that he accepted the payment "on this condition." Should the committee be in error as to this, however, and it should be argued that these facts

tended to sustain the judgment of the court, if it constituted the entire proof before the tribunal, no one, we think, will claim that the inferences which might be drawn from the existence of these facts have not been conclusively rebutted and overthrown by the proof of the form of this receipt, and by the direct and affirmative testimony of two agents of the Government, whose duty it was to attend to the issuing of this voucher and obtaining the receipt of the claimant; both of whose testimony is in harmony with the claim of Mr. Murphy that the sum of $5,685 was taken as a payment on account, which evidence is unimpeached in any way.

A. E. Merrett, chief clerk of the Bureau of Yards and Docks, testifies as follows:

These bills were made upon regular Bureau forms, in triplicate, and in the manner that current payments were made, no special instructions being given by the Secretary's indorsement except to pay amount named.

After the approval by the chief they were taken to the residence of Mr. Charles Murphy, on Thirteenth street, near G, by Mr. Partello, one of the clerks attached to the Bureau, who delivered them in person to the claimant.

The amount was subsequently drawn for in regular manner through the Navy pay-office, Washington, D. C., payment being made out of the appropriations for dry-dock, navy-yard, Mare Island, California.

The said Charles Murphy, during these proceedings, expressed himself as not satisfied with the small amount paid or allowed him, and expressed a determination to apply to the Court of Claims for redress. Which intention was also expressed in the presence of Admiral Howell, who advised him if not satisfied and farther relief to apply to said court. Mr. Murphy strongly protested against the final settlement of his accounts, and was informed the payment made was in the ordinary manner, on usual forms, and would not prevent his appeal to the courts or Congress for further relief.

D. J. Partello fully confirms the evidence of Mr. Merrett on this point. He says:

I proceeded to make out the bills in the usual manner upon Bureau forms and the same as all current payments were made. It was, as I understood it, a payment of so much money as stated in the report. I had no direction otherwise.

I remember of bad feeling and trouble between the chief, Admiral John C. Howell, and Mr. Murphy, and know the chief, Admiral Howell, was opposed to the claim and appeared to dislike the claimant very much. I did not hear fully what passed between them.

Mr. Murphy was advised to absent himself for reasons given, and that his papers when adjusted and prepared would be sent him. After making all the vouchers they were approved by the chief, and also by the Secretary of the Navy, and came back to me as satisfactory in form. As the papers were valuable it was thought best that I should deliver them, which I did, at the door of Mr. Murphy's residence, 13 street, near G, which I was directed to do by the chief of the Bureau.

Mr. Murphy asked me what condition the papers were in; I asked him to examine them and see; I explained to him as best I could the form of payment, and that it was in the usual manner, and as daily current bills were paid. He asked me as to final receipt, protesting against signing such receipt, and was informed the payment was in the ordinary manner. and would not prevent his appeal to the courts or to Congress for further relief if not satisfactory.

The bills came to me through the Navy pay office, drawn for in the usual manner, and were paid, one copy of the vouchers being now on the files of the Bureau from appropriations of navy-yard, Mare Island, dry-dock.

Could unimpeached testimony, drawn from the agents of the adversary, be more conclusive to repel the assumption that the receipt signed by the claimant was "conditional;" that it was so intended by the "Secretary" as well as by the "claimant," and that "he accepted the payment on these terms?" In addition to this evidence, the court had before it the testimony of Mr. Murphy, detailing all of the facts and circumstances surrounding the execution of this receipt, all of which statements were fully corroborated by the employés of the Government, and this additional pregnant fact was before the court (shown by the record of the

case), that within ten days from the date of that receipt suit was instituted by the claimant against the United States in the Court of Claims, in which he treated this as a payment on account, and claimed a balance still due him.

The facts presented by this record constrain the committee to dissent from the conclusions of the court, and satisfies them that great, though unintentional, injustice has been done the claimant.

The decision of the Court of Claims, under the rules prescribed by the Supreme Court regulating appeals, eliminated from the records before the Supreme Court this vital question, as under these rules the facts found are treated as in the nature of a special verdict, and the evidence on which the finding rests is not certified as a part of the record.

ORDER IN REFERENCE TO APPEALS FROM THE COURT OF CLAIMS.

Regulations prescribed by the Supreme Court of the United States under which appeals may be taken from the Court of Claims to the said Supreme Court.

RULE 1.

In all cases hereafter decided in the Court of Claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. A finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts, upon which the court founds its judgment or decree. The finding of facts and conclusions of law to be certified to this court as a part of the record.

* * * * * * *

In reviewing the case, Waite, C. J., devotes to it but nine lines, and in affirming the judgment below said:

We are clearly of opinion that the acceptance by the claimant, *without objection*, of the amount allowed by the Secretary of the Navy in his adjustment of the account presented to him, was equivalent to a final settlement and compromise of all the items of the present claim included in that account.

This judgment of the Supreme Court was based upon the finding of fact set out in the eighteenth finding, referring to which the court in 94 U. S., 218, said: "The finding is conclusive, unless impeached for some error in law appearing in the record," and in the statement of the case the same view is taken of the fact of the eighteenth finding, to wit: "The Department adopted the basis of adjustment, to which he (the claimant) agreed," yet upon the most careful examination of the entire record we can find no evidence which supports this finding of fact.

Again, the Supreme Court, under the rule cited, would, it seems, have been justified in looking into the evidence on which the motion for a new trial was urged, at least so far as it was set out in the order of the court in overruling the motion. But the record of the case in the Supreme Court shows no proceedings before the Court of Claims after the entry of the original findings. The court of last resort was, therefore, deprived of passing upon the correctness of the conclusions reached by the lower court on this vital question. The only explanation for this omission which has been brought to the attention of the committee is found in the affidavit of General W. S. Rosecrans, which is as follows:

TREASURY DEPARTMENT, REGISTER'S OFFICE,
April 28, 1887.

DEAR SENATOR: During my first term in Congress, and while living at 409 Indiana avenue, a United States commissioner came to take my testimony in a certain suit between the United States and the Missouri Pacific road.

After it was concluded, J. S. Blair, esq., who represented the Government in taking the testimony, entered into a chat with me. He said he had been detailed by the Attorney-General, on behalf of the Government, to attend to a great many cases before the Court of Claims. He and I stated some things which have since produced an impression on my mind. I said:

"The court sometimes appears to constitute itself rather an attorney on behalf of the Government to defeat claimants than to be a tribunal doing exact justice between them and the Government."

He asked me to mention such a case. Having recently read a printed transcript of the case of Charles Murphy (contractor for the excavation of the Mare Island dry-dock pit) *vs.* United States, I said: "The court findings in that case are at variance with the facts. They failed to take notice that the Government violated the contract by not freeing the pit of water—an express and necessary stipulation to the fulfillment of the contract; and, besides that and many other things, finding that a receipt given for money paid on account was a receipt in full, in spite of the testimony of two clerks of the Navy Department, one of whom handed Mr. Murphy the warrant. This strikes me all the more unfavorably, because I have been a disbursing officer for many years, and have taken a thousand such receipts in exactly the same form for moneys paid to contractors on account. Yet the Supreme Court was not furnished with the evidence that was laid before the Court of Claims that such forms of accounts were common. Moreover, Mr. Murphy protested, when receiving the draft in question, that he would not receive it unless assured that it was an ordinary payment on account.

To this Mr. Blair replied: "Yes; the case of Charles Murphy was a hard one. I was acting for the Government in that case and considered it my duty to avail of everything legal to defeat the claim. The testimony to which you allude was not sent up to the Supreme Court, because I maintained that, although received by the Court of Claims, it came too late, and therefore legally ought to be excluded, and I carried my point.

"I admit that that case was a hard one, and that Mr. Murphy had equities which went down."

As these facts may be of some use, I have taken an affidavit before a notary public to the correctness of this statement.

Very truly, yours,

W. S. ROSECRANS.

Hon. J. K. JONES,
U. S. Senate, Washington, D. C.

Sworn to before a notary public, April 28, 1887, at Washington, D. C.
[SEAL.] ROS. A. FISH,
Notary Public.

The doctrine announced by the Supreme Court in the case of unliquidated damages is clearly stated in Baird *vs.* United States (96 U. S., 430): "In such cases the question is whether the payment was in fact made and accepted in satisfaction," and further, "the acceptance of this money without objection was equivalent to an acceptance of the payment in satisfaction."

In the opinion of the committee there is no evidence in the record to bring this case within the influence of the rule as laid down in Baird *vs.* United States, but the evidence is overwhelming in removing the bar which the enforcement of that rule would present.

Since the decision of the court additional evidence upon this question has been obtained and submitted to your committee:

(1) The testimony of the claimant, which is as follows:

That upon the report of Admiral Rogers being received by the Secretary of the Navy, the matter was referred to the then solicitor of the Navy Department, who thereupon made a written report recommending the payment to the claimant of the sum of $5,685, as recommended by Admiral Rogers; also that claimant should be required to give a receipt in full of any further claims against the United States before being paid said sum, $5,685. That neither the Secretary of the Navy, the said Admiral Rogers, nor said solicitor of the Navy Department was in and about the making of said reference an auditing officer of the United States, whereby the same did not come within the decision of the court in Baird *v.* The United States (6 Otto, 430). That claimant distinctly and positively declined to execute the receipt so recommended by said solicitor, and affirmed that should he be paid said sum, $5,685, he would receive

and receipt for it as a payment only of so much on account, and with reservation of right to seek further payment from Congress or this honorable court. That this his refusal to execute such receipt in full was well known to the officers of the Navy Department, who sent him the vouchers for the said $5,685 without exacting of him the execution and delivery of such receipt in full, and well knowing that he did not intend the receipt he gave to be taken and considered as a receipt of all and further claims of his against the United States, * * * and that he expects to prove the foregoing facts as to his refusal to accept and receipt for said $5,685 in full satisfaction of all his said demands against the United States by Augustus M. Merritt and ——— Partello, residents of Washington, D. C.

(2) The affidavit of Senator W. M. Stewart, as follows:

AFFIDAVIT OF WM. M. STEWART.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

William M. Stewart, being first duly sworn, deposes and says that in the matter of the claim of Charles Murphy affiant recollects that the said Murphy called on him (affiant) and General John B. Frisbie, of California, with regard to receiving payment from the Navy Department of a claim against that Department for work performed at Mare Island, and that he desired to give such a receipt as would not be an acknowledgment of the full payment of the claim, and that after some conversation in which affiant thinks it was quite possible that he drew the form of a receipt. But affiant's recollection is distinct that General Frisbie finally prepared the receipt of which the following is a copy:

HON. GEORGE M. ROBESON, *Secretary of the Navy:*

SIR: I will accept the sum of $5,685 recommended to be paid me by Admiral John Rodgers, in part payment of my claim against the Navy Department, provided it will not vitiate my claim in the courts or in Congress for further relief.

Respectfully,

CHARLES MURPHY.
WM. M. STEWART.

Subscribed and sworn to before me this 26th day of October, A. D. 1882.
HOLLAND SMITH, *Notary Public.*

(3) The affidavit of John B. Frisbie, as follows:

CITY OF MEXICO:

John B. Frisbie deposes and says that Charles Murphy called upon him February, 1877, at Wilkes Hotel, in the city of Washington, D. C., and requested deponent to draw for him the form of a receipt to be given the Navy Department for a sum of money that said Department proposed to pay to the said Murphy, which would enable him to accept the sum tendered without relinquishing his claim for further compensation, whereupon deponent prepared a receipt or proposal of which he believes the following to be a copy:

I will accept the sum of $5,685 recommended to be paid me by Admiral John Rogers in part payment of my claim against the Navy Department, provided it will not vitiate my claim in the courts or in Congress for further relief.

JOHN B. FRISBIE.

LEGATION OF THE UNITED STATES,
Mexico, 16th May, 1883.

Subscribed and sworn to before me this 16th day of May, A. D. 1883.

In faith whereof I hereunto affix my signature and the seal of this legation on this day and date above written.

P. H. MAYAN,
Envoy Extraordinary and
Minister Plenipotentiary of the United States.

(4) The position taken by the claimant must be presumed to have been known by the Secretary of the Navy, as the receipt drawn by General Frisbie was delivered to him by his messenger.

These facts, with those which were before the court on the motion for a new trial, satisfy your committee that Congress should grant to the claimant the relief asked for by Senate bill 661.

The examination of the records of Congress will show that the claim of the petitioner in this case is neither novel nor exceptional.

Numerous similar cases where Congress has granted relief in the face of adverse decisions of the court may be found by an examination of its statutes, among which are the following:

1. Samuel J. Hensley: Adverse decision in Court of Claims; paid $96,375 by act of June 9, 1860. (12 Statutes, 847.)
2. David C. Myer: Adverse report Court of Claims; paid $30,000 by act of June 16, 1860. (12 Statutes, 861.)
3. Heirs Stephen Johnston: Court commanded to try the case again; to allow value of his land, *with interest*, from February 2, 1841; act February 9, 1863. (12 Statutes, 915.)
4. Alex. Cross: Court of Claims commanded to hear case again, by act July 2, 1864, 13 Statutes, 591; it gave him judgment for $43,607.63. (1 C. C. Reports, 347.)
5. Samuel Norris: Case sent back to Court of Claims for *examination and allowance;* act June 22, 1866. (14 Statutes, 608.)
6. Rich'd W. Meade: Court was instructed to hear case over by act July 25, 1866. (14 Statutes, 611.)
7. Arthur Edwards *et al.:* Bill passed for further relief in court; vetoed by President Buchanan April 17, 1860. (Senate Journal, first session, Thirty-sixth Congress, page 406.)
8. Battle and Evans: Court of Claims directed to hear case a second time; act of April 5, 1872. (17 Statutes, 651.)
9. Theodore Adams: Supreme Court decided against him (7 Wallace, 463); paid $112,740.76, by act January 20, 1873 (17 Statutes, 713). This is the first and only instance where Congress has paid a claimant in face of an adverse judgment by the Supreme Court of the United States.
10. Lydia R. Shreve: Adverse judgment in Court of Claims; paid $50,000, act January 13, 1881. (21 Statutes, 602.)
11. Heirs of the brig General Armstrong: Adverse judgment in Court of Claims; paid by Secretary of State under act of May 1, 1882, $70,739. (22 Statutes, 697.)
12. A. Grant: Adverse decision in Court of Claims; Congress ordered the court to try it over; act January 5, 1883 (22 Statutes, 750); judgment for $14,016.29.

Your committee report the bill favorably and recommend that it do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 113.

D. P. ABBOTT, A. S. KEEVES, AND T. E. SMITH.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MANSUR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5782.]

The Committee on Claims, to whom was referred the bill (H. R. 5782) for the relief of D. P. Abbott, A. S. Keeves, and T. E. Smith, have had the same under consideration, and now report as follows:

That in the Fiftieth Congress a bill (H. R. 12214) practically the same as this bill was introduced and referred to this committee, the object of said bill being to credit Charles E. Hasbrook, collector of internal revenue of the sixth district of Missouri, with the sum of $4,946.58, being the face value of certain internal-revenue stamps which were stolen by burglarious entrance into the office of James G. Walker, deputy collector under said Hasbrook, at the city of St. Joseph, Mo., on or about September 25, 1888, so as not to hold said Hasbrook accountable to the Government for the loss of said internal-revenue stamps or their value.

Since then the said Charles E. Hasbrook has gone out of office and closed his accounts with the Government, but it appears from the papers submitted to your committee, and herewith submitted, that the said J. G. Walker was under a bond in the sum of $———, with the said Abbott, Keeves, and Smith as his sureties, to secure Hasbrook from loss by him as his deputy; that prior to going out of office Hasbrook demanded of his deputy, Walker, that he consult his sureties and raise the money, "as it would be impossible for him to carry the shortage on the books after he went out of office, and the money will have to be provided." The sureties raised the money and paid it to Hasbrook, who in turn settled with and paid the Government, all of which appears from the papers submitted.

The object of the pending bill is to substitute the sureties, who have paid for the stolen stamps, for the collector, Hasbrook.

All facts relating to the burglary and loss of the stamps fully appear from the report and papers presented with it, made upon bill H. R. 12214, being House Report No. 4067, Fiftieth Congress, second session. As said report was favorable, and your committee are still satisfied with it, they adopt it now, upon the questions of burglarious theft and amount of loss, etc. And accordingly your committee recommend bill H. R. 5782 do pass.

[House Report No. 4067, Fiftieth Congress, second session.]

The Committee on Claims, to whom was referred the bill (H. R. 12214) for the relief of Charles E. Hasbrook, having had the same under consideration, submit the following report:

Charles E. Hasbrook is the collector of internal revenue for the sixth district of the State of Missouri, and the object of the relief sought grows out of the following facts shown by the record:

On the night of September 25, 1888, the office of James G. Walker, deputy collector of internal revenue at St. Joseph, Mo., within the said sixth district of Missouri, was burglariously entered, and certain internal-revenue stamps of the *face value* of $4,946,58, for which the said Charles E. Hasbrook, collector of internal revenue, is responsible, were stolen, and although every reasonable effort has been made in that direction, the same have not been recovered nor the thief apprehended. These stamps were of a character—not being marked with serial numbers, being tobacco, cigar, and beer stamps—which renders their use to the detriment of the Government possible; but if the use of the same by any manufacturer of tobacco or brewer shall be hereafter detected, the said parties are by law indictable for felony, for which crime severe punishment is provided.

While no direct facts in this connection have been developed, suspicion of complicity in the burglary and theft of these stamps falls upon a person previously employed by Deputy Collector Walker in his office, who was discharged for gross malfeasance and appropriation of Government money, which his relatives subsequently made good to the amount of $300.

Deputy Collector Walker kept these stamps in a wooden box, easily pried open, which was done in the accomplishment of this theft, and his office, in a public building, was protected only by an ordinary lock. The Government provides no iron safes or other comparatively secure repository for this character of Government property, and even if it did, there is always risk of successful burglary at the hands of expert thieves. The fact of these stamps being kept in a wooden box was known to the person suspected of complicity in the robbery, and the supposition is that his familiarity with the premises rendered the burglary comparatively easy. So far as is known these stamps have not been used to the detriment of the Government, and in view of the great risk attending their illegal use by manufacturers of tobacco and cigars, and brewers of beer, it is possible they will not be thus used.

Rewards have been offered by Deputy Collector Walker for the recovery of the stamps and arrest of the thief, so far without effect, and the steps taken by Government officials to trace these stolen stamps have not met with success.

It further appears that at the date of the robbery Deputy Collector Walker was absent on official duty, canvassing and inspecting his district, and that the office at St. Joseph was in charge of Deputy Collector L. O. Stiles. Both deputies make affidavits as to the facts, which are sustained by the report of Internal-Revenue Agent George B. Clark, who was directed to examine into the case. Both deputies swear they used all care and diligence at their command for the safe-keeping of these stamps, and have exhausted all means in their power for apprehension of the thief and recovery of the stamps.

Under the precedents established in like cases, your committee are of opinion that the relief contemplated by the bill should be granted. No loss has so far occurred to the Government save the paper and printing of the stamps, and it would be unjust to Collector Hasbrook and his sureties, under the circumstances, to hold them responsible for the mere face value of the stolen stamps.

Your committee, therefore, recommend passage of the bill.

APPENDIX.

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, December 18, 1888.

SIR: I have the honor to acknowledge the receipt of your letter of 15th instant, and herewith inclose certified copies of papers in this office showing the facts in the case of the loss by theft of certain internal-revenue stamps, amounting to $4,946.58, from the office of the deputy collector at St. Joseph, Mo., in September last, as follows:

Affidavit of James G. Walker, deputy collector, September 27, 1888.

Affidavit of L. O. Stiles, deputy collector, September 27, 1888.

Letter of James G. Walker, deputy collector, to Collector Hasbrook, dated September 27, 1888.

Letter of Collector Hasbrook to commissioner, September 28, 1888.
Report of Revenue-Agent George B. Clark, October 11, 1887.

Referring to your request for such suggestions as may appear to me proper to make to the end that you may be possessed of such data as will enable you to secure action of Congress at the present session looking to the relief of Collector Hasbrook and his sureties, I reply that I know of no data or facts in the case other than are contained in the copies inclosed.

In reply to your request also to be advised whether the stamps stolen can be used without detection, to the loss or detriment of the Government, I have to state that the stamps can be so used (possibly without detection).

Respectfully, yours,

E. HENDERSON,
Acting Commissioner.

Hon. WILLIAM WARNER,
House of Representatives.

ST. LOUIS, MO., *October* 11, 1888.

SIR: I have the honor to report that having learned recently, while engaged in the fourth district of Iowa in the discovery of violations of internal-revenue law, of the alleged robbery of the internal-revenue stamp office at St. Joseph, sixth district Missouri, of a large lot of stamps, I communicated with Collector Hasbrook by telegraph concerning the same, he in reply asking me to visit St. Joseph and investigate the matter and inform him of my conclusions.

Accordingly, on the night of the 3d instant, the earliest moment practicable after the receipt of my first intelligence of the occurrence, I left for St. Joseph, arriving there on the morning of the 4th and entering at once upon my investigation.

Before making my presence in the city known, I took steps to advise myself fully of the character and habits of the parties most interested in the matter, and from the most reliable and valuable sources to inform myself of public opinion regarding it. The result of my investigations in this line were all to the credit of Deputy Collector James G. Walker and his assistant, Deputy Collector L. O. Stiles, touching the question of their integrity.

After securing all information available from outside sources, I called upon Deputy Collector Walker, at his office, and proceeded with my investigation, eliciting the following facts:

At about 5 o'clock on the evening of Tuesday, 25th ultimo, as stated to me by Deputy Collector Stiles, the latter locked the office door and left for the night, leaving the stock of stamps on hand in a wooden box lying on the floor of the office. The room occupied by Deputy Walker for office purposes was up to a few days since located in the city hall building of St. Joseph. This room is the one occupied for several years past for this purpose, including at least a part of the period of Collector Doppler's incumbency of the collectorship of the sixth district. The only safeguard for the protection of the records and other property of the United States kept there was a very small safe, barely adequate to the storage of the record books pertaining to the office, and not large enough to receive a package of internal revenue stamps. This safe is the private property of Deputy Walker. The stamps on hand have, I learn, been kept at all times in a common wooden box, kept placed on the floor of the office. The box is, I should judge, about 2 feet in length, 18 or 20 inches in width, and about 10 inches in depth. (At the time of my examination of it, having no rule with me, I did not measure it.) It is constructed of ordinary soft lumber, the lid or cover secured to it by very common hinges, and a hasp and staple with a small padlock the only fastenings to it.

This fastening, even, had become so loosened with use that the box could be opened easily without the use of a key by removing the staple with a knife-blade or by the employment of some very slight leverage. The custom had long prevailed, according to the statements of both Deputies Walker and Stiles, of leaving, at the close of each day's business, all the internal-revenue stamps on hand in this box, the lid closed, but without even the formality of turning down the hasp and locking the padlock, so insecure were these fastenings at best in the way of protection.

This was the condition in which, according to his statement to me, Deputy Stiles left the stock of stamps on hand upon leaving the office on the evening of the 25th ultimo. The office door was fastened by a very common lock, and could be opened, apparently, quite easily, by any one desiring to enter, without the aid of the key.

Deputies Walker and Stiles state that they arrived at the office at about the same moment on Wednesday morning, the 26th ultimo, and found the office door unlocked and ajar. Upon entering their attention was immediately attracted to the stamp-box, sitting in its usual position on the office floor, the lid being thrown back, and

evidently a large proportion of the stamps deposited in it on the previous evening had been removed and carried away; no trace whatever of the perpetration of the theft otherwise being visible about the room.

The following is a schedule of the stamps missing from the stock with which that office is charged on the books of the collector at Kansas City, with their money values:

	Number.
Tobacco stamps:	
Two-ounce stamps	6,000
Four-ounce stamps	6,197
Eight-ounce stamps	2,245
Sixteen-ounce stamps	2,818
Values of foregoing	$499.18
	Number.
Cigar stamps:	
Twenty-five cigar stamps	582
Fifty cigar stamps	10,000
Value of same	$1,543,65
	Number.
Beer stamps:	
One-barrel stamps	325
One-quarter-barrel stamps	10,000
One-eighth-barrel stamps	630
Value of same	$2,903.75

Total face money-value missing stamps, $4,946.58.

I found Deputy Walker apparently suffering great anxiety of mind with regard to the loss, and learned from other sources that such had been the case continuously since the occurrence; also, that he had industriously adopted every expedient occurring to him calculated to enable him to locate and recover the missing property. Among other measures he had issued a printed postal-card circular giving the kind and denomination of each of the lots of stamps taken, offering a reward of $50 for the recovery of same, copies of which had been mailed to collectors and stamp deputies of other districts for information.

My investigation developed nothing regarding the abstraction of these stamps conflicting with the sworn statements submitted by deputies Walker and Stiles (which were, I am informed, forwarded to you by Collector Hasbrook for information) save as to the exercise of due care.

Deputy Walker had as an assistant in his office a few months since, a young man, a resident of St. Joseph, named Westpheling, whom, having caught in peculations from the receipts of the office, he discharged, a brother-in-law of the culprit making good the amount of these peculations to Deputy Walker to the extent of about $300, as the latter informs me. Westpheling abandoned his family and home on the night following the discovery of these peculations, and it has not been known, that I could learn of, that he has been seen in St. Joseph since.

I would respectfully state that I regard it as highly probable that Westpheling (who has, I learned, assumed a fictitious name since his departure from St. Joseph) may be located very soon, with fair prospect of developing facts sustaining this theory of a robbery of the office having been committed either by himself or by some other party acting under his information and instructions.

An especial object, also, of my investigation was that I might obtain means of identification of any of the missing stamps, with a view to tracing and possibly recovering them should they be kept within my division, or should I locate them elsewhere.

No stamps, however, bearing serial numbers as a means of identification having been taken, it is altogether a matter of speculation at present what disposal of them may be attempted.

I would respectfully state that I have delayed the submission of this report of results of my investigation until to-day, pending anticipated developments of measures which I have adopted, hoping that I might be enabled thereby to communicate to you more satisfactory information regarding the matter.

Respectfully, yours,

GEO. B. CLARK,
Revenue Agent.

Hon. JOSEPH S. MILLER,
Commissioner of Internal Revenue, Washington, D. C.

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, MISSOURI,
Kansas City, September 28, 1888.

SIR: Referring to my telegram of the 26th instant, relative to the loss by robbery of internal-revenue stamps, value $4,946.58, at the office of my stamp deputy, J. G. Walker, at St. Joseph, Mo., I have the honor to herewith submit for your information the inclosed copies of reports and affidavits relative to the case.

I am convinced that no blame attaches to the deputies stationed at said office.

I have requested Revenue Agent Clark to proceed to St. Joseph and investigate the matter.

Please advise me how to report the deficiency on my monthly and quarterly reports, and what course to pursue to enable me to get the necessary relief from charge in my account for the stamps lost.

Very respectfully, yours,

CHAS. E. HASBROOK,
Collector.

Hon. COMMISSIONER INTERNAL REVENUE,
Washington, D. C.

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, MISSOURI,
St. Joseph, September 27, 1888.

DEAR SIR: It becomes my duty to report the loss to this office of the following stamps by theft:

	Value.
Tobacco stamps:	
6,000 two-ounce, 6,197 four-ounce, 2,245 eight-ounce, 2,818 sixteen-ounce.	$499.18
Cigar stamps:	
582 twenty-fives, 10,000 fifties	1,543.65
Beer stamps:	
325 barrel, 10,000 quarter-barrel, 630 eighth-barrel	2,903.75
Total face value	4,946.58

under the following circumstances:

The stamps on hand were placed in a large wooden box, used for that purpose by Deputy Stiles, at the close of business, on Tuesday afternoon, September 25, 1888, and the office closed and locked. Upon entering my office at 7.30 o'clock Wednesday morning I found the door unlocked and partly open, and upon investigation with Deputy Stiles I found the above stamps had been taken from the box and removed from the office by some party unknown to me.

Respectfully,

JAMES G. WALKER,
Deputy Collector.

CHAS. E. HASBROOK, Esq.,
Collector Internal Revenue, Kansas City, Mo.

STATE OF MISSOURI, *County of Buchanan, ss:*

J. G. Walker, being duly sworn according to law, deposes and says he is deputy collector of internal revenue for Charles E. Hasbrook, collector for the sixth collection district of the State of Missouri; that after an absence of two days, officially canvassing his division, upon entering his office on Wednesday morning about 7.30 o'clock he found the door of his office unlocked and partly open, and upon investigation with Deputy Stiles he found the stamps of the kind, denomination, and value mentioned in the attached report had been stolen from the box, in which they had been usually kept, by some unknown party or parties wholly unknown to him, and that he had used all care and diligence at his command for the safety of stamps in his charge, and since the theft he had used all the means in his power for the apprehension of the thief and recovery of the stamps.

JAMES G. WALKER,
Deputy Collector.

Subscribed and sworn to before me, a notary public, this 27th day of September, 1888. My term will expire March 14, 1891.

[SEAL.]

ANDREW J. SMITH,
Notary Public, Buchanan County, Mo.

	Value.
Tobacco stamps: Two-ounce, 6,000; four-ounce, 6,197; eight-ounce, 2,245; sixteen-ounce, 2,818	$499.18
Cigar stamps: Twenty-fives, 582; fifties, 10,000	1,543.65
Beer stamps: Barrel, 325; quarter-barrel, 10,000; eighth-barrel, 630	2,903.75
Total	4,946.58

STATE OF MISSOURI, *County of Buchanan, ss:*

I, Lewis O. Stiles, deputy collector for Charles E. Hasbrook, collector of internal revenue for the sixth collection district of Missouri, do solemnly swear that at the close of business about 5 o'clock p. m., on Tuesday, September 25, 1888, I carefully placed all the stamps on hand in the box in which they are kept, and I securely locked the office, and did not return again that evening. I came to the office the next morning at about 7.30 o'clock, and upon investigation with Deputy Collector Walker found that a large amount had been stolen of the kind and value exactly as stated in the report hereto annexed. That the person or persons who took these stamps is wholly unknown to me. That previous to the stealing of these stamps I had used all the usual care and diligence for the protection and safety of the same.

L. O. STILES,
Deputy Collector.

Subscribed and sworn to before me, a notary public, this 27th day of September, 1888. My term of office will expire March 14, 1891.

[SEAL.]

ANDREW J. SMITH,
Notary Public, Buchanan County, Mo.

	Value.
Tobacco stamps: Two-ounce, 6,000; four-ounce, 6,197; eight-ounce, 2,245; sixteen-ounce, 2,818	$499.18
Cigar stamps: Twenty-fives, 582; fifties, 10,000	1,543.65
Beer stamps: Barrel, 320; quarter barrel, 10,000; eighth-barrel, 630	2,903.75
Total	4,946.58

[Inclosure.]

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, MISSOURI,
Kansas City, June 20, 1889.

DEAR SIR: Now that a new collector has been appointed it will be necessary for you to see your bondsmen at once, and arrange for the adjustment of your matter by July 1, 1889. I find it impossible for me to carry the shortage on the books after leaving the office. The money will have to be provided.

Please consult your bondsmen and have the funds in readiness.

Respectfully,

CHAS. E. HASBROOK,
Collector.

JAS. G. WALKER,
Deputy Collector, St. Joseph, Mo.

[Inclosure 2.]

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, MISSOURI,
Kansas City, July 9, 1889.

DEAR SIR: The receipt for special deposits on account of stamps stolen is at hand. Please accept my thanks for your prompt remittance and for the faithful administration of the affairs of your office during the past four years.

Very truly, yours,

CHAS. E. HASBROOK,
Collector.

Mr. JAMES G. WALKER,
Deputy Collector, St. Joseph, Mo.

[Inclosure 3.]

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, MISSOURI,
Kansas City, April 15, 1889.

SIR: In reply to your letter of late date in relation to the loss of stamps, stolen from your office, and asking advice as to the proper entries to make on your records, when the amount due is received from "your bondsmen, etc., you are informed that you will treat the same on all your forms as sales of beer stamps, thereby taking credit for the 7½ per cent. discount upon the amount sold customary."

Respectfully,

CHAS. E. HASBROOK,
Collector.

JAS. G. WALKER,
Deputy Collector, St. Joseph, Mo.

[Inclosure 4.]

[Original.] The depositor will forward this, by the first mail, to the Secretary of the Treasury.

THE NATIONAL BANK OF ST. JOSEPH,
No. 765. *St. Joseph, Mo., July 8th,* 1889.

I certify that Chas. D. Hasbrook, collector internal revenue, 6th district of Mo., per J. G. Walker deputy, has this day deposited to the credit of the Treasurer of the United States forty-seven hundred twenty-eight and $\frac{80}{100}$ dollars, on account of stamps stolen from Deputy Collector Walker's office, Sept. 25th, 1888, for which I have signed triplicate receipts.

GEO. B. HULL,
Cashier.

$4,728.80.
[Stamped across the face: Duplicate.]

[Duplicate.] The Depositor will send this, by the first mail, to the Commissioner of Patents, if the deposit is on account of patent fees; to the Commissioner of internal revenue, if on account of internal revenue; to the Treasurer U. S., if on account of semi-annual duty; to the Commissioner of the General Land Office, is on account of surveys of public lands.

THE NATIONAL BANK OF ST. JOSEPH,
No. 765. *St. Joseph, Mo., July 8th,* 1889.

I certify that Chas. E. Hasbrook, collector internal revenue, 6th district of Mo., per J. G. Walker deputy, has this day deposited to the credit of the Treasurer of the United States forty-seven hundred twenty-eight and $\frac{80}{100}$ dollars, on account of stamps stolen from Deputy Collector Walker's office Sept. 25th, 1888, for which I have signed triplicate receipts.

GEO. B. HULL,
Cashier.

$4,728.80.
[Stamped across the face: Duplicate.]

[Triplicate]. The depositor will retain this for his own use and security.

THE NATIONAL BANK OF ST. JOSEPH,
No. 765. *St. Joseph, Mo., July 8th,* 1889.

I certify that Chas. E. Hasbrook, collector internal revenue, 6th districtof Mo., per J. G. Walker deputy, has this day deposited to the credit of the Treasurer of the United States, forty-seven hundred twenty-eight and $\frac{80}{100}$ dollars on account of stamps stolen from Deputy Collector Walker's office Sept. 25th, 1888, for which I have signed triplicate receipts.

GEO. B. HULL.
Cashier.

$4,728.80.
[Stamped across the face: Duplicate.]

[Inclosure 5.]

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, August 9th, 1889.

SIR: Your letter of the 5th instant is received, stating that you had accounted to the Government for the value of the stamps alleged to have been stolen in September, 1888, amounting to $4,728.80, and you ask if there is not some law or regulation by which you can be re-imbursed for this loss.

In reply, you are informed that there is no provision of law authorizing this Department to re-imburse officers for such losses, but their only relief is through a special act of Congress.

The stamps in question were charged upon the books of this office to Collector Hasbrook, who was responsible to the Government for the same, and appears to have accounted for them by the payment of cash; any claim for Congressional relief, therefore, would need to be made by him.

Respectfully,

JOHN W. MASON,
Commissioner.

JAS. G. WALKER, Esq.,
Deputy Collector, St. Joseph, Mo.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 114.

NEWTON McCOY.

FEBRUARY, 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MANSUR, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1899.]

The Committee on Claims, to whom was referred the bill (H. R. 1899) for the relief of Newton McCoy, state that a similar bill (H. R. 8470) in the Fiftieth Congress, first session, was reported upon favorably and with a recommendation that said bill do pass.

Your committee are still well satisfied with said report, and adopt the same for report upon the pending house bill No. 1899.

[House Ex. Doc. No. 73, Fiftieth Congress, first session.]

Letter from the Secretary of the Treasury, transmitting an estimate from the Attorney-General of an appropriation to pay Newton McCoy for services and expenses as counsel for the United States in the prosecution of fraudulent timber-land entries.

JANUARY 13, 1888.—Referred to the Committee on Appropriations and ordered to be printed.

FEBRUARY 7, 1888.—Referred to the Committee on Claims.

TREASURY DEPARTMENT,
January 12, 1888.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Attorney-General of the 10th instant, submitting for an appropriation the account, and its accompanying papers, of Newton McCoy, $560, for services and expenses as counsel for the United States in the conduct of certain hearings before the register and receiver of the land office at Oregon City, Oregon, of alleged fraudulent timber-land entries, there being no funds at the disposal of the Attorney-General available for the purpose.

Respectfully, yours,

C. S. FAIRCHILD,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF JUSTICE,
Washington, January 10, 1888.

SIR: Herewith inclosed are copies (1) petition of Newton McCoy, by his attorney, James A. McCormick, for compensation for services rendered in the city of Portland, State of Oregon, at the request of the United States attorney for that district, in taking charge of thirty hearings, and prosecuting the same, on behalf of the United States, before the register and receiver of the land office of Oregon City, Oregon; (2) the letter of June 4, 1885, from the Acting Secretary of the Department of the Interior; (3) letter of August 25, 1885, from Newton McCoy to the Attorney-General, inclosing his account, in the sum of $560, taxed by the court for special services; (4) and of a letter of Mr. McCormick, of March 15, 1886, in relation to the services; the same being forwarded to you for submission to Congress for such action as it may think proper, the Department having no fund under its control for the payment of such employment.

Very respectfully,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE TREASURY.

SYRACUSE, N. Y., *December* 27, 1887.

SIR: I inclose to you herewith a petition of Newton McCoy, of Portland, Oregon, to the Congress of the United States, and a draught of a bill, by which you and the proper accounting officers of the Treasury may be enabled to pay him in accordance with his sworn statement of fees and disbursements, which were submitted to you on August 25, 1885.

The petition speaks for itself. I believe it contains briefly all the essential facts and references to enable Congress or its proper committees to fully understand the nature of Mr. McCoy's claim, and the equity of it.

This petition and draught of bill are the results of an intimation made by you to the writer in your office on or about January 16, 1887.

It has been suggested by the Hon. Binger Hermann, member of Congress for Oregon (whose constituent Mr. McCoy is), that it will be necessary to secure your official indorsement or recommendation, upon these papers or apart therefrom, in order to insure the consideration by the Congress.

I therefore respectfully ask that you will make such indorsement or recommendation as may seem to you to be equitable; and that you will inclose it, with the petition and draught of bill, to my address, so that I can forward all of them to Mr. Hermann.

I shall gratefully appreciate your prompt action.

Very respectfully,

JAS. A. MCCORMICK,
Attorney for Petitioner.

The ATTORNEY-GENERAL OF THE UNITED STATES,
Washington, D. C.

To the Congress of the United States of America:

The petition of Newton McCoy respectfully shows:

That your petitioner now resides, and during all of the times hereinafter mentioned has resided in the city of Portland, State of Oregon, doing business thereat as an attorney and counsellor-at-law.

That on or about the 10th day of June, 1885, your petitioner was appointed as special counsel, and as such instructed by the United States attorney for Oregon, Mr. J. F. Watson, to take charge of thirty hearings, and to prosecute the same on behalf of the United States before the register and receiver of the land office at Oregon City, Oregon.

That your petitioner, in pursuance of his appointment and instructions as aforesaid, rendered legal services to the United States in conducting said hearings before the said register and receiver, from the 15th day of June to the 21st day of August, inclusive, of 1885, and in so doing expended money in traveling from the said place of hearing.

That on the 25th day of August, 1885, your petitioner submitted to the honorable Attorney-General of the United States a sworn statement of his fees and disbursements for and on account of the services aforesaid, amounting to the sum of $560.

That the said United States attorney on the same day approved of the said services and account, and certified the same to the said Attorney-General.

That thereafter, and on September 3, 1885, your petitioner was informed by the said Attorney-General that no compensation could be allowed to him for the service rendered as aforesaid for the reason that his appointment to the same was not made in strict and literal accordance with sections 363, 365, and 366, Revised Statutes of the United States. That because of the said ruling of the honorable Attorney-General your petitioner remained wholly unpaid for his said services and the disbursements incident thereto.

Wherefore, your petitioner prays that you enact a law which, by the approval of the President, will enable the honorable Attorney-General and the proper accounting officers of the Treasury to pay him for his services and disbursements according to the account above mentioned.

Your petitioner respectfully refers to letters and documents now on file in the office of the honorable Attorney-General, and prays that you will examine them as evidence of this his claim; the said papers and documents being these, viz:

(1) Letter from the honorable Secretary of the Interior to the honorable Attorney-General, dated June 3, 1885, and referring to a telegram from Jas. A. McCormick, a special agent of the General Land Office.

(2) Telegram from the honorable Attorney-General to Jas. A. McCormick, special agent General Land Office at Oregon City, Oregon, dated June 5, 1885.

(3) Telegram from honorable Attorney-General to J. F. Watson, United States attorney at Portland, dated June 5, 1885.

(4) Letter of instructions from the honorable Attorney-General to United States Attorney Watson, Portland, Oregon, dated June 5, 1885, and including copy of a letter from honorable Commissioner, General Land Office, dated June 3, 1885.

(5) Account of Newton McCoy, submitted to honorable Attorney-General August 25, 1885.

(6) Letter from McCoy accompanying the same.

(7) Letter from United States Attorney Watson, dated Portland, Oregon, August 25, 1885, to the honorable Attorney-General, referring to said account.

(8) Letter from honorable Attorney-General to McCoy, dated September 3, 1885, referring to his account.

(9) Letter from honorable Attorney-General to United States Attorney Watson, dated September 3, 1885, referring to the same.

(10) Letter from Jas. A. McCormick, special agent General Land Office, to honorable Attorney-General, dated Portland, Oregon, March 15, 1886, referring to the same.

(11) Letter from United States Attorney Watson to the honorable Attorney-General, dated March 22, 1886, referring to the same.

(12) Letter from the honorable Attorney-General dated March 31, 1886, in reply to Mr. Watson's said letter of March 22.

Respectfully,

NEWTON MCCOY,
By his attorney, JAS. A. MCCORMICK.

STATE OF NEW YORK, *Onondaga County, ss:*

James A. McCormick being duly sworn, says: That he is the duly empowered attorney of Newton McCoy, the petitioner above named; that as such attorney he prepared the foregoing petition; that the statements therein contained are true of his own knowledge.

JAS. A. MCCORMICK.

Subscribed and sworn to before me this 27th day of December, 1887.

W. G. CADY,
Notary Public, Onondaga County, N. Y.

Whereas, between the 14th of June and the 22d day of August, in the year 1885, Newton McCoy, of the city of Portland, State of Oregon, performed legal services for the United States under appointment and direction of the United States attorney for the district of Oregon as counsel in thirty hearings held before the register and receiver of the United States land office at Oregon City, Oregon; and

Whereas said McCoy, on the 25th day of August, 1885, submitted to the Attorney-General of the United States a sworn statement of his fees and disbursements for and on account of said services, amounting to $560; and the said Attorney-General, on the 3d day of September, 1885, ruled and informed said McCoy that no compensation could be allowed for his said services for the reason that his appointment to perform the same was not made in accordance with sections 363, 365, and 366 of the Revised Statutes of the United States: Therefore,

Be it enacted by the Senate and House of Representatives in Congress assembled, That the Attorney-General and the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to pay to said McCoy, or to his legal representatives, the sum of $560, and an amount sufficient to pay the same is hereby appropriated from the Treasury.

DEPARTMENT OF THE INTERIOR,
Washington, June 4, 1885.

SIR: I have the honor to forward herewith copy of a letter from the Commissioner of the General Land Office, dated 3d instant, with copy of telegram from Special Agent McCormick, Portland, Oregon, dated the 2d instant, to the effect that certain hearings respecting the fraudulent character of certain entries of the public lands will be held before the register and receiver at Oregon City, commencing the 8th instant. Eminent counsel have been employed by the alleged trespassers. The special agent requests that the district attorney be instructed to take charge of the hearings in behalf of the United States. I therefore ask that, if possible, the district attorney be so instructed by telegraph, direct from your Department, and Agent McCormick advised in the same manner.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

Hon. A. H. GARLAND,
Attorney-General

PORTLAND, OREGON, *August* 25, 1885.

DEAR SIR: I herewith inclose my account against the United States for services in thirty cases before the register and receiver of the Oregon City land office.

Yours, respectfully,

NEWTON MCCOY.

Hon. A. H. GARLAND,
Attorney-General of the United States, Washington, D. C.

The United States, Dr. to Newton McCoy.

For services for the United States as counsel at hearings before the register and receiver of the United States land office at Oregon City, Oregon, in the following cases:

1885.		
June 15.	U. S. *v.* A. J. Dygert, 2 days	$20
17.	U. S. *v.* H. M. Riggs, 2 days	20
19.	U. S. *v.* Wm. H. Markell, 2 days	20
22.	U. S. *v.* Clarence B. Riggs, 2 days	20
24.	U. S. *v.* Alfred Barr, 2 days	20
26.	U. S. *v.* Walter F. Jones, 2 days	20
29.	U. S. *v.* I. H. Taffe, 2 days	20
July 1.	U. S. *v.* Donald Mackenzie, 2 days	20
6.	U. S. *v.* E. C. Masten, 2 days	20
8.	U. S. *v.* F. P. Finnegan, 2 days	20
10.	U. S. *v.* Wm. J. Walker, 2 days	20
27.	U. S. *v.* Falk Steinhardt, 2 days	20
29.	U. S. *v.* H. C. Doty, 2 days	20
31.	U. S. *v.* J. C. Havely, 1 day	10

1885.		
Aug. 1.	U. S. *v.* Harry R. Lewis, 1 day	$10
3.	U. S. *v.* C. H. Menssdorffer, 1 day	10
4.	U. S. *v.* John Clark, 1 day	10
5.	U. S. *v.* C. T. Prehn, 1 day	10
6.	U. S. *v.* Fred. W. Prehn, 1 day	10
7.	U. S. *v.* J. B. Sheehy, 1 day	10
10.	U. S. *v.* A. B. Graham, 1 day	10
11.	U. S. *v.* A. S. Nichols, 1½ days	15
12.	U. S. *v.* Taubenheimer, 1 day	10
13.	U. S. *v.* Edwin Kemera, 1 day	10
14.	U. S. *v.* David F. Dryden, 1 day	10
15.	U. S. *v.* Thomas E. Richet, ½ day	5
17.	U. S. *v.* Thomas Guineau, 1 day	10
19.	U. S. *v.* George E. White, 2 days	20
20.	U. S. *v.* H. R. Alden, 1 day	10
	Mileage from Portland to Oregon City and return, distance 30 miles (round trip), for 20 days	120
	Total amount due	560

STATE OF OREGON, *County of Multnomah, ss:*

I, Newton McCoy, being first duly sworn, say that I was employed by the United States district attorney for the district of Oregon to take charge of the above cases; that I performed the services as set forth in the foregoing account; that said services are reasonably worth the sum of $440; and that I traveled the distance above stated in necessary travel during the performance of my duties as counsel in said cases.

NEWTON MCCOY.

Subscribed and sworn to before me this 24th day of August, 1885.

[SEAL.] P. A. MARQUAM, Jr.,
Notary Public in and for the State of Oregon.

OREGON CITY, OREGON, *August* 22, 1885.

I hereby certify that Newton McCoy was engaged as counsel, and that he performed the service as above set forth, and that his services are reasonably worth the amount charged.

JAS. A. MCCORMICK,
Special Agent General Land Office.

PORTLAND, OREGON, *March* 15, 1886.

SIR: Newton McCoy, of this city, has heretofore presented to you an itemized statement of account, $560, for legal services rendered the United States in the conduct of hearings before the register and receiver of Oregon City, Oregon, land-office, of certain alleged fraudulent timber-land entries, and said account is unadjusted.

I have been requested to present to you a brief statement of the facts upon which Mr. McCoy's claim is founded, and this is intended as such.

Upon reports of investigations made by me the honorable Commissioner General Land Office ordered hearings to be had before local office at Oregon City to determine the validity of thirty-three entries under the act of June 3, 1878, involving some $13,000, or 5,280 acres.

Those hearings commenced on June 8, 1885. It was my duty to present the testimony and evidence on the part of the Government. Before the trials began it was intimated to me that the defendants had employed able counsel, and would contest the cases into the Supreme Court, if necessary.

In that event it appeared to me that the interests of the United States could best be guarded, from first to last stage of the proceedings, if the district attorney, or some one authorized by him, should take charge. Acting immediately on this view, I telegraphed the honorable Commissioner on June 2, 1885, in these words: "Hearings in thirty-three timber-land entries begin at Oregon City on 8th instant. Parties interested have employed eminent counsel. I ask that the United States district attorney be detailed to assist me, or that I be authorized to employ special counsel at expense not exceeding $300. Answer. Oregon City, Oregon."

I received no answer to this telegram, but instead, did receive from yourself, on June 5, 1885, a telegram stating that the district attorney had been by you instructed to take charge of the cases, etc.

About the same time District Attorney J. F. Watson was instructed by you (see telegram June 5) to take charge, and advising him that instructions were sent by mail. Those instructions arrived to him on June 18. Meantime the cases had been going on five days without the assistance of the district attorney or anybody else. I am convinced that it was impossible for the district attorney personally to attend, owing to the presence of other important business, and so Mr. McCoy was retained or deputized, and took charge of the cases from June 15 until they were finished, August 21, as certified in his bill of particulars.

If action was delayed to await clearer and more definite instructions than your said telegram and letter of June 5, at least twenty days would pass without the assistance asked for.

Mr. McCoy earned the amount submitted to you for approval, and in a spirit of equity ought to be paid.

Very respectfully,

JAMES A. MCCORMICK,
Special Agent General Land Office.

The ATTORNEY-GENERAL OF THE UNITED STATES.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 115.

GEORGE F. ROBERTS ET AL.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Mansur, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1929.]

The Committee on Claims, to whom was referred the bill (H. R. 1929) for the relief of George F. Roberts *et al.*, have had the same under consideration and report the accompanying bill, which refers these claims to the Commissioner of Internal Revenue for examination and allowance of such amounts as he shall find to have been illegally collected, as he can fully verify the statements of the facts by the records in his office. Proper claims were made out, and certified to as being correct, by the assistant assessors, assessors, collectors, deputy collectors, and inspectors of the districts when the facts occurred.

There is a great deal of other evidence corroborating the officer's statement, not necessary to be stated here, as the main facts certified to by the revenue officers are fully stated and set forth in the letter of the Hon. Green B. Raum, Commissioner of Internal Revenue, dated May 18, 1882, to Charles J. Folger, Secretary of the Treasury, as follows:

Pate & Co., from July 1 to December 31, 1864, deposited in bonded warehouse 4,186 barrels distilled spirits, containing 213,885¼ gallons proof spirits; when these packages were removed from warehouse they contained, by actual inspection, only 200,613¼ proof gallons. This tax of $1.50 was collected on the full quantity deposited, amounting to $320,828.25. The tax due on the 200,613¼ gallons actually found in the packages on withdrawal was $300,920.25, showing an excess of $19,908 collected. In computing the leakage in transit, the sum of $245.81 was computed on the full quantity bonded. I propose to allow the claim for the remainder of the tax appearing to have been paid by these claimants in December, 1864, as set forth, on spirits lost by leakage and evaporation while stored in bonded warehouse, to wit, $19,662.19.

Very respectfully, your obedient servant,

Green B. Raum,
Commissioner.

Hon. John Sherman, while Secretary of the Treasury, approved the payment of such claims, and in his letter, dated November 14, 1877, says: "There can be no doubt that the assessments for leakage were erroneous and improper." This was in the Wholly case, where the tax was refunded. He being out of office and Secretary Folger in office, the recommendation of Commissioner Raum that said taxes be refunded was not approved by Mr. Folger, and hence these claims remain unpaid.

The claims of George F. Roberts, administrator, etc., and Henry W. Smith, surviving partner, etc., are in all essential respects similar to the claim of Pate & Co.

These claimants, or their legal representatives, have been urging an allowance at various times ever since the taxes were paid.

The Court of Claims found as a fact that the practice had been uniform to only assess the tax upon the quantity withdrawn from bonded warehouse prior to 1869. (18 Court of Claims, 709, Finding 3.) It is admitted that the Court of Claims had no jurisdiction of tax cases (7 Wall, 122; 9 Court of Claims, 367), and that the circuit court of the United States had none (9 Wallace, 560). It is also admitted by the Commissioner of Internal Revenue that it was the general practice to allow similar claims for the loss by leakage while in bonded warehouse under the act of 1864, and that the instructions and regulations of the Commissioner, approved by the Secretary, provided for such allowances, and that the collectors' bonded accounts were settled by crediting the loss for leakage while in bonded warehouse. In a letter of Commissioner Raum, dated May 18, 1882, proposing to allow one of these claims, all being taxed by the same law, he says:

> The allowance for loss by leakage while in warehouse was allowed, and collectors instructed to allow under the act of 1864, but that in some few cases the collectors misunderstood the law and collected the tax on the spirits that had been lost by leakage while in warehouse.

And from his letter it would appear that there are only four refunding cases that have not been allowed under the act of 1864. Commissioner Walter Evans, in his letter of March 17, 1884, says:

> That it was the general practice to allow the loss of spirits by leakage while in warehouse under the act of 1864, and this accounts for so few cases for refunding being presented.

The Hon. Saimon P. Chase, Hon. Hugh McCulloch, and Hon. William P. Fessenden, while they were Secretaries of the Treasury, as also the Hon. Joseph J. Lewis, Hon. E. A. Rollins, and Hon. Green B. Raum, while they were Commissioners of Internal Revenue, each, by letters, opinions, regulations, and circulars, held that the tax was only to be collected on the quantity withdrawn from warehouse, and their interpretation of the law was sustained by the Supreme Court of the United States in 97 United States, 268, October term, 1877, where the court decides that no tax can be collected under the act of 1864, section 94, unless *sold* or removed for *sale*, and this section 94 is the same as section 55 of the act of 1864, which levied the tax upon these claimants' spirits. The Committee on Ways and Means of the Forty-sixth Congress, second session, Report No. 1119, page 15, made by Hon. John G. Carlisle, M. C., say "that the act of 1864 only taxed the quantity sold or removed for sale, and only taxed the quantity sold." And the same construction was again given to the same law by the same committee of the Forty-seventh Congress, first session, Report No. 1277, page 14, made by Hon. William D. Kelley (chairman), and the Attorney-General of the United States in 16 Opinions of Attorneys-General, 667, decides that under the act of 1864 the tax can only be collected on what was sold or removed for sale, etc., and was only collectible when it was removed into private hands.

Bills have been reported both in the Senate and House to pay these claims by the following committees: Ways and Means, Forty-eighth Congress, report by Mr. Herbert; Claims, Forty ninth Congress, Report No. 1122, by Mr. Howard; Fiftieth Congress, Report No. 513, by Mr. Shaw; Senate Claims, Report No. 1230, by Senator Whitthorne; Fiftieth Congress, Report 279, by Mr. Mitchell, and the bill reported passed the Senate without a dissenting vote, and is reported this Fifty-first Congress, Report 94, by Mr. Mitchell. In this last report the committee say:

The foregoing report sets out the facts correctly and states the law truly, and there is no hesitation in declaring that claimants are entitled to a refund of whatever tax they have paid on any amount over and above the number of gallons actually withdrawn.

The collector of internal revenue having misconstrued the law, regulations, and the instructions of the Secretary and Commissioner of Internal Revenue and wrongfully collected from these claimants the taxes they now ask to be refunded to them, and it being clearly shown that the law, the regulations of the Department, and the invariable construction of the act of 1864 was only to tax the quantity withdrawn from bonded warehouse, all loss by leakage while in bonded warehouse was allowed. The bonded accounts of the collectors of internal revenue were settled by allowing them credit for the loss by leakage while in bonded warehouse, and several claims for such loss have been allowed and paid by the Treasury Department, and a large number of such claims have been abated, and it appears from the letters of the Commissioner of Internal Revenue that only three remain unsettled beside the Thayer case. Therefore, it would be but just, right, and legal to allow these remaining claims, and your committee are of the opinion that there was an erroneous assessment and collection of the taxes, and that they ought to be refunded.

The foregoing report sets out the facts and states the law, and claimants are entitled to a refund of whatever tax they have paid on any amount over and above the number of gallons actually withdrawn.

Your committee therefore report back bill H. R. 1929 without amendment and recommend its passage.

House Report No. 513, Fiftieth Congress, first session.

FEBRUARY 15, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHAW, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2127.]

The Committee on Claims, to whom was referred the bill (H. R. 2127) for relief of George F. Roberts *et al.*, have had the same under consideration, and recommend that said bill be amended by inserting in line 6, after the word "respectively," "such amounts as shall be shown to the satisfaction of the Commissioner of Internal Revenue to have been paid by them as tax on distilled spirits in excess of the quantity withdrawn by them from United States bonded warehouse: *Provided*, That the amount paid to each shall not exceed the sum hereinafter stated, that is to say"; and that as so amended it do pass.

The report made by the Commitee on Ways and Means of the Forty-eighth Congress, second session, so fully sets forth the facts upon which these claims are based that your committee adopt the same and make it part hereof.

The report is as follows:

The material facts in the case of Thayer Brothers are that, during the period from July 1 to December 31, 1864, they deposited in a bonded warehouse in the fifth district of Illinois, which was under the control of the collector and the store-keeper, 3,100 barrels of distilled spirits, containing when deposited, as shown by the certificates of the inspector, 190,182.12 gallons; that when said barrels were withdrawn and re-inspected there were, as shown by the re-inspection, only 182,988.58 gallons, making an actual loss while in said warehouse of 7,193.53 gallons; that they were required by the collector to pay the tax of $1.50 per gallon upon the quantity placed in the bonded warehouse, making the tax paid on the quantity lost by leakage while in warehouse $10,790.32. They filed their affidavit on the regular form (46) with the Commissioner of Internal Revenue for a refund of said tax July 18, 1867, avering the facts to be as above stated, and that the tax paid on the quantity lost by leakage while in warehouse was illegal, erroneous, and improper, and ought to be refunded, and to this affidavit was affixed the certificates of the proper internal-revenue officers.

The assistant assessor certified to the facts as follows:

ASSISTANT ASSESSOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit, and that I believe the statements to be in all respects just and true.

August 22, 1867.

THOMAS ELLIS,
Assistant Assessor, Fourth Division, Fifth District.

The assessor also certified to the facts as follows:

ASSESSOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit of William B. Thayer, and that I believe the statements to be in all respects just and true; and I further certify that, from present personal examination, I find

the sum of $10,790.32 is part of $432,976.09 reported against the said Thayer Brothers on page 1, line 15, of the list on Form 60, for December, 1864, now on file in my office, and that the tax is included in the collector's aggregate receipt for the said list transmitted by me to the Commissioner of Internal Revenue, and that the claim has not heretofore been allowed in any form. Said receipt amounts to $713,632.23.

September 10, 1867.

GEORGE I. BERGEN,
Assessor, Fifth District, Illinois.

The collector of the district at the time the tax was paid certifies as follows:

COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify, upon personal examination, that the name of the claimant and the amount claimed are found reported on Form 60, for December, 1864, now on file in my office, and that the same was paid to me on the 20th, 23d, 24th, 28th, 30th, and 31st days of December, 1864, and are included in my aggregate receipt for said list, the receipt amounting to $713,632,23, delivered to the assessor to be transmitted to the Commissioner of Internal Revenue.

September 11, 1867.

JOHN H. BRYANT,
Late Collector, Fifth District, Illinois.

The United States inspector for said district during the time such spirits were stored in the bonded warehouse, swears that he had in charge the bonded warehouse of Thayer Brothers, as the United States store-keeper, and said spirits were under his control, and in his possession; that he personally inspected and re-inspected said spirits, and that he was present when they were deposited in the bonded warehouse, and also present when they were withdrawn from said bonded warehouse; that there were deposited in said warehouse from July 1, 1864, to December 31, 1864, 190,182.12 gallons, making the tax paid $285,273.18, which included the leakage, and that the quantity actually withdrawn was only 182,988.50 gallons; showing by actual gauging, that the quantity lost by actual leakage and evaporation while said spirits were stored in said bonded warehouse, and while under his control and in his possession, was 7,190.50 gallons, and that the tax paid upon the quantity so lost by leakage and evaporation was $1.50 per gallon, and amounted to $10,790.32, and paid upon the identical spirits in which the leakage, evaporation, and soakage occurred. His tabular statement shows in detail the quantity inspected and re-inspected. This claim was, by the Commissioner of Internal Revenue, June 13, 1868, suspended until a decision should be had in the similar claim of Pate & Co., and the Commissioner of Internal Revenue did not take action in this similar claim of Pate & Co. until May 18, 1882, when he recommended that this claim of Pate & Co. be allowed and paid. These claimants or their legal representatives have been almost constantly urging its allowance either before the Departments, the courts, or Congress, ever since the same was assessed and collected. The Committee on Ways and Means at the Forty-eighth Congress unanimously recommended the payment of this claim, and reported a bill for its payment. Your committee therefore recommend the passage of the accompanying bill.

In the claim of Silas Q. Howe, surviving partner of W. T. Pate & Co., the material facts are, that during the period from July 1 to December 31, 1864, Pate & Co. deposited in a bonded warehouse in the third district of Indiana, which was under the control of the collector and store-keeper, 4,196 barrels of distilled spirits, containing when deposited, as shown by the certificate of the gauger's inspections, 213,885½ proof-gallons; that when said barrels were withdrawn upon re-inspection and re-gauge there were only 200,613½ proof-gallons, making the actual loss 13,272 proof-gallons; that the collector required them to pay the tax of $1.50 per gallon upon the quantity deposited in the bonded warehouse, making the tax paid upon the quantity lost by actual leakage while in bonded warehouse $19,908.

On the 26th day of October, A. D. 1866, and the 27th day of July, A. D. 1871, they filed with the Commissioner of Internal Revenue their affidavit, on the regular Treasury Form 46, averring that the facts were as above stated, and that the tax paid upon the quantity lost by leakage while in bonded warehouse, was illegal, erroneous, and improper, and ought to be refunded; to these affidavits were affixed the certificates of the proper internal-revenue officers, in corroboration of the aforesaid facts.

J. S. Smith Hunter, the collector of internal revenue at the time said spirits were in bonded warehouse, in his deposition filed in the Court of Claims, testifies that he was collector of internal revenue from July 1 to December 31, 1864; that during said

time Pate & Co. deposited in bonded warehouse, approved by him, 213,885¼ proof gallons; that on the 15th, 25th, and 30th days of December, 1864, he required the tax of $1.50 per gallon to be paid on all the spirits stored in warehouse, amounting to $320,828.25, which sum he paid over to the United States; that said bonded warehouses were under his control and subject to his orders all the time said spirits were stored (see printed deposition).

The deposition of S. Q. Howe, October 2, 1867, proves the quantity deposited, withdrawn, leakage, and tax-paid, to be as before stated (see printed record). The deposition of W. T. Pate, taken at same time, proves the facts to be as stated, and that the cooperage was bad. William Emerson, in his deposition, swears that the cooperage was bad.

The United States inspector or ganger, in his deposition taken October 1, 1867, and his affidavit of date of June 10, 1868, swears that in person he inspected or gauged all the spirits distilled by Pate & Co., from July 1 to December 31, 1864; that the bonded warehouse was in his custody, and the spirits in his possession as United States storekeeper; that he was present, during the time aforesaid, and Pate & Co. deposited 4,196 barrels of distilled spirits, containing 213,885¼ gallons, first proof, in bonded warehouse, and the tax paid thereon amounted to $320,828.25; that in December, 1864, he was present when the same were withdrawn from bonded warehouse; that he in person reinspected or regauged the 4,196 barrels aforesaid, and they only contained 200,613¼ proof gallons; that the quantity lost by leakage and evaporation was 13,272 gallons proof spirits; that the cooperage was bad, and that the tax was paid after the evaporation had occurred in the quantity deposited, including the quantity lost by leakage. In his detailed statement, dated June 10, 1868, giving the inspections or gaugings, and the reinspections or regauges, the same shows that 13,272 gallons first proof was lost while in bonded warehouse; and in his affidavits of April 17 and 27, 1882, he gives the manner how he inspected and reinspected, and that the instruments used were those provided by the United States Government, and that the leakage stated in his affidavit of June 10, 1868, actually occurred, and that W. T. Pate & Co. lost the whisky and paid the tax upon it besides; that he was particular in gauging and regauging.

To the application, verified by affidavit of W. T. Pate, setting forth the facts as stated, dated August 31, 1870, and filed with the Commissioner of Internal Revenue. The collector at the time said tax was assessed and collected affixed his certificate thereto as follows:

COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts in the within affidavit, and am satisfied that the statements are in all respects just and true, and I further certify upon personal examination that the name of the claimant and the amount claimed are found reported on page 1 line 1 of the list on Form 60, for December, 1864, heretofore now on file in my office, and that the same was paid to me on the 15th, 25th, and 30th days of December, 1864, and are included in my aggregate report on Form 60, which aggregate amounted to $350,957.62, which were delivered to the assessor to be transmitted to the Commissioner of Internal Revenue on or about the 23d day of January, 1865, and that the sum collected in said month from W. T. Pate & Co., and reported as aforesaid, amounted to $320,828.25.

J. S. SMITH HUNTER,
Late Collector Third District, Indiana.

BLOOMINGTON, IND., *July* 28, 1871.

On the back of the application for a refund, verified by affidavits filed in the internal-revenue office July 27, 1871, was indorsed:

"Examined and submitted for allowance July 7, 1880, by Breckenridge, who was chief of the refunding division."

The Commissioner of Internal Revenue, General Green B. Raum, in person examined this claim, and in his letter, dated May 18, 1882, says:

Pate & Co., from July 1 to December 31, 1864, deposited in bonded warehouse 4,186 barrels distilled spirits, containing 213,885¼ gallons proof spirits; when these packages were removed from warehouse they contained, by actual inspection, only 200,613¼ proof gallons. This tax of $1.50 was collected on the full quantity deposited, amounting to $320,828.25. The tax due on the 200,613¼ gallons actually found in the packages on withdrawal was $300,920.25, showing an excess of $19,908 collected. In computing the leakage in transit, the sum of $245.81 was computed on the full quantity bonded. I propose to allow the claim for the remainder of the tax appearing to have been paid by these claimants in December, 1864, as set forth, on spirits lost by leakage and evaporation while stored in bonded warehouse, to wit, $19,662.19.

Very respectfully, your obedient servant,

GREEN B. RAUM,
Commissioner.

There is a great deal of other evidence in the record not necessary to be stated here, as it merely corroborates that of the assessor, collector, and inspector. Upon this testimony, and after a very careful examination of all the facts contained in this voluminous record before us, the committee are of opinion that there was an erroneous assessment and collection of $19,662.19, and that it ought to be refunded, as recommended by the Commissioner of Internal Revenue. The claimants have been continually urging a refund ever since said sum was paid, and your committee therefore recommend the passage of the accompanying bill.

The material facts in the claim of Henry W. Smith, surviving partner of T. and J. W. Gaff & Co., are that during the period from July 1 to December 31, 1864, they deposited in a bonded warehouse, in the fourth district of Indiana, which was under the control of the collector and the store-keeper, 4,254 barrels of distilled spirits, containing, when deposited, 208,748½ gallons; that when said barrels were withdrawn they only contained 199,373½ gallons, as shown by the evidence, making the actual loss 9,375 proof gallons; that the collector required them to pay the tax of $1.50 per gallon on the quantity deposited in bonded warehouse, making the tax paid on the quantity lost by leakage while in the bonded warehouse $14,062.50. In the year 1866 these claimants employed the attorney who was prosecuting the Pate & Thayer claims before the Departments to prosecute their claim, and while waiting for a decision in the Pate claim the time expired in which to file the same, without fault of these claimants.

The affidavit of Henry W. Smith sets forth the facts as before stated, and avers that the assessment and payment of the tax is illegal and erroneous, and assessed upon a quantity that did not exist when collected, and that the tax was assessed after the loss occurred.

The certificates of the officers of internal revenue are affixed thereto.

The deputy collector of said district certifies as follows:

"DEPUTY COLLECTOR'S CERTIFICATE.

"I, George Pfalzgraf, deputy collector second division, sixth district, do hereby certify that I have personally investigated the statements made in the within affidavit by comparing the quantity claimed for leakage with the quantity actually allowed for leakage during subsequent years, and from the best information I can obtain after careful inquiry I believe such statements to be in all respects just and true.

"GEO. PFALZGRAF,
"*Deputy Collector Second Division, Sixth District, Indiana.*

"LAWRENCEBURGH, *August* 25, *A. D.* 1885."

The clerk in charge of division of accounts in the office of Commissioner of Internal Revenue certifies as follows:

"I hereby certify that the records of this office show that receipts on Form 61 were given by late Collector J. L. Yater, covering the amounts mentioned on the first page of Collector Hunter's certificate, and that his reports on forms 86 and 87 show that the same was collected.

"Division of Accounts, September 30, 1885.

"B. H. COLLINS,
"*In charge of Division of Accounts.*"

The collector of the district at the time said tax was paid certifies as follows:

"COLLECTOR'S CERTIFICATE.

"I hereby certify that I have carefully investigated the matters set forth in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify, upon personal examination, that I find the sum for July $57,415,50, August $55,524, and September $79,206, reported against the said T. and J. W. Gaff & Co., on page 1, line 1, of the list on Form 60, for July, August, and September, 1864, and also the sum for October $72,331.50, November $48,291.75, and December $115,109.25, reported against T. and J. W. Gaff & Co., on page 1, line 1, of the lists on Form 60 for October, November, and December, 1864, now on file in my office, and that the same was paid to me August 31, September 16, 1864, and on the 2d, 15th, 22d, and 31st days of December, 1864, and are included in my aggregate receipts for said lists, amounting to $643,209, and transmitted to the Commissioner of Internal Revenue, and that no claim for the assessments herein complained of has heretofore been presented; the money herein claimed was not paid on a compromise; and that I was the collector of internal revenue in 1864, during the time said spirits were deposited and withdrawn from bonded warehouse.

"October 12, 1835.

"JAMES L. YATER,
"*Late Collector Fourth District, Indiana.*"

The assistant assessor at the time said spirits were in bonded warehouse certifies as follows:

ASSISTANT ASSESSOR'S CERTIFICATE.

I hereby certify that I was assistant assessor at the time said spirits were bonded and withdrawn from bonded warehouse in 1864; that I was well acquainted with the members of the firm of T. and J. W. Gaff & Co. in 1864, and from their high standing and the careful investigation of the facts set forth in the within affidavit I believe the statements to be in all respects just and true.

August 25, 1885.

P. LOUIS MATHEWS,
Late Assistant Assessor, ——— Division, Fourth District, Indiana.

The present collector of internal revenue certifies as follows:

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, INDIANA,
Lawrenceburgh, August 25, 1885.

I hereby certify, from present personal examination and the personal knowledge of said firm, I believe the statements to be in all respects just and true, and that I find the sum of $427,878.50 reported against T. and J. W. Gaff & Co. on page 1, line 1, of the lists on Form 60 for the following months, to wit: July, $57,415.50; August, $55,524; September, $79,206; October, $72,301.50; November, $48,291.75; December, $115,109.25; and are included in the aggregate receipts for said lists, the receipts amounting in July, $114,537; in August, $106,431; in September, $126,576; in October, $108,277.50; in November, $66,978; in December, $120,409.50, which were transmitted to the Commissioner of Internal Revenue, and that I do not find that any claim for the assessment complained of has heretofore been presented, nor do I find any thing going to show that the money herein claimed was paid on a compromise.

August 25, 1885.

WM. D. H. HUNTER,
Collector, Sixth District of Indiana.

And said collector, under date of September 11, 1885, certifies that the same was paid, as appears from daily record of internal-revenue collections for the fourth district of Indiana, as follows: August 31, 1864, $11,726.25; September 16, 1864, $3,704.25; December 2, 1864, $9,470.25; December 15, 1864, $48,890.25; December 22, 1864, $76,391.25; December 31, 1864, $273,540.75. There is also a certified copy of the bonded warehouse books, showing the quantity deposited and the quantity withdrawn, which, like other evidence produced, corroborates the evidence already referred to. We therefore recommend a bill to pay said claim.

Hon. John Sherman, while Secretary of the Treasury, in a letter to Hon. Green B. Raum, Commissioner of Internal Revenue, dated November 14, 1877, in speaking of distilled spirits stored in a United States bonded warehouse, says, "there can be no doubt that the assessments for leakage were erroneous and improper."

The Court of Claims found as a fact that the practice had been uniform to only assess the tax upon the quantity withdrawn from bonded warehouse prior to 1869. (18 Court of Claims, 709, Finding 3.) It is admitted that the Court of Claims had no jurisdiction of tax cases (7 Wall, 122; 9 Court of Claims, 367), and that the circuit court of the United States had none (9 Wallace, 560). It is also admitted by the Commissioner of Internal Revenue that it was the general practice to allow similar claims for the loss by leakage while in bonded warehouse under the act of 1864, and that the instructions and regulations of the Commissioner, approved by the Secretary, provided for such allowances, and that the collectors' bonded accounts were settled by crediting the loss for leakage while in bonded warehouse. In a letter of Commissioner Raum, dated May 18, 1882, proposing to allow one of these claims, all being taxed by the same law, he says:

"The allowance for loss by leakage while in warehouse was allowed, and collectors instructed to allow under the act of 1864, but that in some few cases the collectors misunderstood the law, and collected the tax on the spirits that had been lost by leakage while in warehouse."

And from his letter it would appear that there are only four refunding cases that have not been allowed under the act of 1864. Commissioner Walter Evans, in his letter of March 17, 1884, says:

"That it was the general practice to allow the loss of spirits by leakage while in warehouse under the act of 1864, and this accounts for so few cases for refunding being presented."

The Hon. Salmon P. Chase, Hon. Hugh McCulloch, and Hon. William P. Fessenden, while they were Secretaries of the Treasury, as also the Hon. Joseph J. Lewis, Hon. E. A. Rollins, and Hon. Green B. Raum, while they were Commissioners of Internal Revenue, each, by letters, opinions, regulations, and circulars, held that the tax was only to be collected on the quantity withdrawn from warehouse, or sold, or removed for sale, etc., and their interpretation of the law was sustained by the Supreme Court of the United States in 97 United States, 268, October term, 1877, where the court decides that no tax can be collected under the act of 1864, section 94, unless *sold* or removed for *sale*, and this section 94 is the same as section 55 of the act of 1864, which levied the tax upon these claimants' spirits, and the Committee on Ways and Means of the Forty-sixth Congress, second session, Report No. 1119, page 15, made by Hon. John G. Carlisle, M. C., say "that the act of 1864 only taxed the quantity sold or removed for sale, and only taxed the quantity sold."

And the same construction was again given to the same law by the same committee of the Forty-seventh Congress, first session, Report No. 1277, page 14, made by Hon. William D. Kelley (chairman), and the Attorney-General of the United States in 16 Opinions of Attorneys-General, 667, decides that under the act of 1864 the tax can only be collected on what was sold or removed for sale, etc., and was only collectible when it was removed into private hands. Therefore, as it is shown that the law allows, as also the regulations of the Department, and that the invariable construction of the act of 1864 was that it only taxed what was sold, etc., or the quantity withdrawn from bonded warehouse, and, in accordance with the construction given, all loss by leakage while in bonded warehouse was allowed. The bonded accounts of the collectors of internal revenue were settled by allowing them credit for the loss by leakage while in bonded warehouse, and several claims for such loss have been allowed and paid by the Treasury Department, and a large number of such claims have been abated, and it appears from the letters of the Commissioner of Internal Revenue that only three remain unsettled besides the Thayer case. Therefore, it would be but just and right to allow these remaining claims, and your committee are of the opinion that there was an erroneous assessment and collection of these taxes and that they ought to be refunded.

We therefore recommend the passage of the accompanying bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 116.

RELIEF OF JOHN FINN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Mansur, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1649.]

The Committee on Claims, to whom was referred the bill (H. R. 1649) for the relief of John Finn, have considered the same and now report the same with amendments.

Practically a bill similar to this was favorably reported to the House in the Fiftieth Congress (see H. R. 1111), first session, and at a later day in same session a similar bill having passed the Senate and been reported to this House and referred to this committee, this committee thereupon again favorably reported the Senate bill to this House, and recommended its passage. (See S. bill 489, first session Fiftieth Congress, and House Report No. 3377, Fiftieth Congress, first session.)

It may be added that, in substance, the Senate adopted the House report. Under these circumstances, your committee being still well satisfied with the views and argument presented in the report of this committee in the Fiftieth Congress, do hereby adopt the same, with certain amendments, to wit: In lines 5 and 6, strike out the words "with legal interest," and again in line 16 the words "with legal interest; and as thus amended recommend the passage of the bill.

APPENDIX No. 1.

Senate Report No. 1338, Fiftieth Congress, first session.

MAY 15, 1888.—Ordered to be printed.

Mr. SPOONER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 489.]

The Committee on Claims, to whom was referred the bill (S. 489) for the relief of John Finn, having had the same under consideration, respectfully submit the following report:

The Committee on Claims of the House of Representatives, having had under consideration a similar bill, submitted the following report, which the committee adopt as a fair statement of the facts upon which the claim for relief is based, and also as affording a sufficient history of the case:

The claim in this case is for $15,677.40, with interest, for horses and mules delivered to the United States in October, 1863, under arrangement with the quartermaster's department at Saint Louis. The horses and mules were duly inspected and received on behalf of the Government by an inspector, according to the regulations and customs of the quartermaster's department at Saint Louis for the purchase of horses and mules at that time.

Subsequent to the inspection and receiving of the horses and mules by the authorized inspector, who had been sent for that especial purpose, they were captured by the rebel forces and appropriated to the use of the Confederate Army. The claimant has not been paid for them.

The claimant presented his claim to the Quartermaster-General on July 3, 1874, but it was disallowed for technical jurisdictional reasons.

He then went to Congress, in the first session of the Forty-ninth Congress, but the Committee on War Claims of the House of Representatives referred his claim to the Court of Claims, under the act of March 3, 1883. The claim was dismissed by the court for want of jurisdiction, under section 1069.

He then applied for a rehearing in the Treasury Department, which was granted. On August 13, 1886, the Secretary of the Treasury submitted the claim to the Court of Claims, under section 1063 of the Revised Statutes, where it was heard upon the merits, and the petition dismissed June 2, 1887, upon findings of fact and conclusions of law. The court did not deliver an opinion in the case.

From the judgment of the Court of Claims, Finn appealed to the Supreme Court of the United States, where the judgment of the Court of Claims was affirmed upon the ground that the courts, under the law, had no jurisdiction of the claim. The opinion of the Supreme Court will be found in U. S. Reports, vol. 123 (see Appendix).

Attention is respectfully called to what is said by Second Comptroller Maynard, in extracts taken from his letter of July 20, 1886, granting a rehearing of the claim for newly discovered evidence, which resulted in its transmittal to the Court of Claims under section 1063 of the Revised Statutes, to wit:

In October, 1863, Finn was engaged, under a contract with the Quartermaster's Department, in furnishing horses and mules to the military authorities in the State of Missouri. What the terms of his contract were does not clearly appear. "It is alleged that about October, 1863, he had collected at Sedalia, Mo., 24 horses and 78 mules, which he designed to deliver under this contract; that an agent of the Quartermaster's Department then and there inspected the animals and declared them to be fit for the Government service, and freely accepted them; that they were to be delivered to the

quartermaster at Saint Louis, and that the agent of Finn and other men in his employ started with them for Tipton, the nearest railroad station, several miles distant. While on the way they were attacked by Confederate troops, the men overpowered and taken prisoners, and the horses and mules captured. The men were immediately released, but the horses and mules were taken away by the Confederate troops and were never recovered.

Finn first filed a claim with the Quartermaster-General July 3, 1874, and June 23, 1877, General Meigs then Quartermaster-General, reported adversely to the allowance of the claim upon the ground that the animals were not proved to have been the property of the United States, but the property of the claimant at the time of their capture; that no contract was shown; that there was no proof of inspection nor acceptance by any officer, and that delivery to the United States was not pretended; and that the Quartermaster's Department had no authority to settle the account under the act of July 4, 1864; and that in the judgment of the Quartermaster-General it was a claim for property captured by the enemy cognizant only by Congress.

This decision of the Quartermaster-General was transmitted to the Auditor with the accompanying papers, who, on May 14, 1878, disallowed the claim and transmitted the papers to the Second Comptroller for his official action.

While the claim was pending in his office additional evidence was filed by the claimant, and the Comptroller thereupon returned the papers in the case, with the additional evidence, to the Auditor, in order that he might dispose of the case in the light of the new evidence presented.

June 14, 1879, the Auditor disallowed the claim and certified the same to the Second Comptroller for his action.

January 29, 1881, the Comptroller concurred in the disallowance of the claim by the Auditor, and returned the papers to the office of the latter for file and preservation, as required by law.

The claimant then resorted to Congress, and the case was referred to the Court of Claims by the Committee on War Claims of the House of Representatives of the Forty-eighth Congress, under the act of March 3, 1883, known as the Bowman act.

When the case came to be considered in that court it was dismissed for want of jurisdiction, because of the provisions of section 1069 of the Revised Statutes, which declared that every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court or transmitted to it by the Secretary of the Senate or Clerk of the House of Representatives, as provided by law, within six years after the claim first accrued; and section 3 of the Bowman act declares that this court shall not have jurisdiction of any claim against the United States which is now (March 3, 1883) barred by virtue of the provisions of any law of the United States.

Inasmuch as six years had then expired since the claim had accrued, the court had no jurisdiction.

The claimant now returns to the Treasury Department and makes application for a rehearing of his claim upon the ground of newly discovered evidence, and under the rule which authorizes the accounting officers to grant a rehearing in the case of a rejected claim where such evidence is presented.

At this late day it is not easy in this *ex parte* proceeding to arrive at a satisfactory conclusion in regard to the character of the transaction which is the foundation of this claim. It is apparent that much new evidence disclosed by the claimant upon this application was not before the accounting officers or considered by them upon the former hearing, but it is extremely doubtful, to say the least, whether it is so far material that its consideration would result in the allowance of the claim.

The most important of this character is the deposition of Henry C. Finch, a witness who was examined upon the trial of the case in the Court of Claims on the 3d day of August, 1885; and he testifies that in 1863 his father was an inspector of Government property under General Allen at Saint Louis, Mo., and that between the 5th and 16th of October, 1863, by the direction of his father, he went to Sedalia, Mo., to inspect a lot of stock for John Finn, stating that there were 32 horses, as he now thinks, and 94 mules; that he made the inspection and they were received by him, and that he branded them with a private brand, a letter P, not where the Government always branded them, but on the neck, right under the mane; that the agent of Finn then paid the former owners of the property for them, or a part of them at least, and that he, in company of the agents and employés of Finn, started with the horses and mules for Tipton, and when 12 miles out of Sedalia a division of the Confederate army, under General Shelby, captured the men and animals, released the former and drove the latter away, and they were never recovered.

In application for rehearing upon the ground of the discovery of new and material evidence, the rule has been adopted to grant such rehearings where the newly-discovered evidence is of such a character that, if it had been presented upon the original hearing and considered with the other proofs in the case, it might have led to the allowance of the claim by the accounting officer.

Applying this rule in the present case, I am of the opinion that the evidence of the witness Finch, now for the first time adduced before the accounting officer, is of sufficient importance to authorize a rehearing of this claim; nor do I think the claimant has been guilty of laches in not presenting this evidence at an earlier day. It appears, and is not disputed, that Finch had removed from his former place of residence in Indiana to the State of Missouri very soon after this occurrence took place, and for a long period of time his whereabouts was not known even to his friends, and he was reputed dead, and the claimant did not discover his existence until 1883, and immediately afterwards sought to avail himself of the benefit of his evidence in the prosecution of his claim.

For another reason I think a rehearing should be ordered. The claim is an important one for the claimant. There are many strong equities in his favor, even if a strict legal liability is not made out. He has sought to have an adjudication upon the merits of his claim in the Court of Claims, and Congress intended by its reference of the case to that tribunal to give him the benefit of a trial in that court. The fact was overlooked that the tribunal did not have jurisdiction under the statute, unless jurisdiction was specially conferred by act of Congress, and hence the case was dismissed without an examination of its merits.

If a rehearing is granted, the claim may be certified to the Court of Claims by the Secretary of the Treasury, under section 1063 of the Revised Statutes; and I would recommend that, when the order for hearing has been filed, the Auditor and Comptroller unite in a certificate to the Secretary of the Treasury requesting its transmission to the tribunal.

A rehearing will be ordered accordingly.

J. H. MAYNARD,
Comptroller.

When the claim was disallowed by Quartermaster-General Meigs the deposition of Finch was not in the record.

And when Comptroller Maynard's letter re-opening the case (*supra*) was written, the deposition of General William Myers had not been taken and filed in the case.

The deposition of General William Myers, a retired officer of the U. S. Army, who was chief quartermaster of the Department of Missouri, U. S. Army, in charge of supplying the troops with horses, mules, etc., in 1862, 1863, and 1864, and the officer who directed the inspection of the horses and mules on the part of the United States, is important. Upon his authority they were inspected and received as the property of the United States.

In the numerous large and unprecedented purchases of horses and mules, in case of emergency, no other practice as to inspection and receiving them could have been adopted.

Your committee, as a part of its report, here call attention to the statement of General Myers, made on oath, to wit:

"Question 1. Where were you along in 1862, '63, and '64, and what business were you engaged in where you then were?

"Answer. In Saint Louis, Mo., when, during that period, I was chief quartermaster of the Department of the Missouri, U. S. Army, in charge of supplying troops operating along the Mississippi and in the Arkansas Valley, with horses, harness, wagons, etc.

"Question 2. Do you know John Finn, of Saint Louis, Mo., and, if so, whether or not he ever supplied any horses during said period?

"Answer. Yes; I know him. I have known him since 1861; he supplied horses during all of that period; a great many horses.

"Question 3. What was the custom as to the method of procuring horses out there at that time?

"Answer. The custom was to purchase wherever we could get them. The need for horses was so great that we were obliged to send agents and inspectors out through different States to get them. We sent them into Illinois, Missouri, Iowa, Indiana, Wisconsin, and Kentucky for horses.

"Question 4. Do you recollect whether said Finn supplied horses from those States or not?

"Answer, My impression is that he procured horses for us from all of those States. I know he got horses for us from several of them.

"Question 5. How did these horses become the property of the United States Government?

"Answer. They were inspected by one of the Government inspectors, and, on passing his inspection, he accepted them and then they were our property—the property of the Government.

"Question 6. How were these inspectors appointed?

"Answer. All the principal inspectors were appointed by me. Hiram G. Finch was

the chief inspector of horses and mules at that time at the depot. Capt. Phil. H. Sheridan, Capt. C. H. McNally, H. Gould, and others, were also inspectors at that time at different places; that is, they all acted as inspectors at different times during that period, Finch being the principal inspector at the depot.

"Question 7. Were these inspectors authorized to appoint deputies or assistants in the discharge of their duties as such inspectors?

"Answer. Yes, they were; that is, the chief inspector at the depot was authorized to appoint and send out deputy inspectors when the occasion required—that is, in case of urgency and necessity.

"Question 8. Who was the judge of such urgency or necessity?

"Answer. He, Chief Depot Inspector Finch; he had full power from me to appoint deputy inspectors.

"Question 9. Do you know if Hiram G. Finch ever appointed Henry C. Finch as a deputy inspector of horses?

"Answer. Yes; he frequently appointed him to go out and inspect horses and mules. I believe Henry C. Finch was the son of Hiram G. Finch, the chief depot inspector.

"Question 10. Were the acts of the deputy or assistant inspector as to accepting horses after inspection considered as binding upon the Government as would be the acts of the principal inspector who appointed those deputies?

"Answer. Yes; when the deputy inspector accepted horses, after inspection, the horses belonged to the Government just the same as if they were accepted by the principal inspector. This was necessarily so, because the principal or chief inspector could not possibly be at every place where there were horses to be inspected, and as we had to have the horses we had to send out deputies with power to accept for the Government in this manner. Finch, the chief depot inspector, frequently sent out deputies as assistants to inspect horses, etc.

"Question 11. How were these horses accepted by those inspectors?

"Answer. Well, he inspected them, and if they were found by him to be suitable, he at once accepted them and they were forthwith shipped or driven to the depot corrals in Saint Louis, where they were branded.

"Question 12. Were they ever branded before they arrived at the depot?

"Answer. Sometimes they were, but generally they were branded at the depot, because the inspector seldom had branding facilities away from the depot, and in many cases it was quite impossible to brand them away from the depot.

"Question 13. Were the horses and mules ever considered the property of the Government before branding and before their arrival at the depot?

"Answer. Yes; I have said so—that is, if they are accepted by any of the inspectors. The acceptance made them our property.

"Question 14. Was that the custom?

"Answer. It was; when accepted, they were the property of the Government.

"Question 15. Was it a frequent occurrence for the horse contractors, after the inspector had inspected and accepted the horses and they had become the property of the Government, as stated by you, to accompany the inspector with the horses to the depot?

"Answer. Well, yes; he generally helped the inspector to the depot with them—that is, when they were driven to the depot.

"Question. Is there anything in connection with this case that you have not testified to that you desire to state? If so, please state it now.

"Answer. Nothing that I know of. I believe that my answers cover the case, except that even when the contractor so accompanied the inspector the horses were ours when they were accepted, the same as in other cases; and if this were otherwise it would seriously interfere with the horse supply of the Army; because the horse contractors would not risk bringing horses across the country in Missouri, as the enemy was moving about in that country at that time; so that to get horses our inspectors had to accept them where they got them."

The findings of the Court of Claims as to the facts are all in favor of Finn, and if the court had had jurisdiction your committee believe a judgment would have been rendered for the amount of the claim. The court's findings are as follows:

I.

In October, 1863, and at the time of the transactions set forth in the third finding, the claimant, John Finn, and one William P. Milliken were partners in trade, engaged in the purchase and sale of horses and mules, under the firm-name of John Finn & Co. During the latter part of the year 1866 Milliken withdrew from the firm, and in consideration of an amount of money paid to him by the claimant conveyed and relinquished to him all of his interest in the firm, including all book accounts and choses in action. No other or more specific assignment of his interest in this claim against the Government was made by him.

II.

During the years 1862 and 1863 the policy and usage of the Quartermaster Department, under General Robert Allen, assistant quartermaster-general, and General William Myers, chief quartermaster of the Department of the Missouri, both stationed in Saint Louis, in regard to the purchase of horses and mules, were as follows:

It was the policy of the Quartermaster Department to purchase horses and mules as far as possible in the State of Missouri and beyond the military lines, the purpose being to draw them out of the reach of the enemy. This cast upon the contractors additional risk, both personal and pecuniary.

The usages of the Quartermaster Department, of which the firm of Finn & Co. were cognizant and in which they had participated as contracting parties in previous transactions, were as follows:

The chief quartermaster, General Myers, appointed a number of horse inspectors, chief of whom was Hiram G. Finch, he being also the principal inspector at the general depot in Saint Louis, and having power to appoint deputies, when in his judgment, the urgency of the case required it. Contracts would then from time to time be made with different parties, pursuant to which they would go into the country in search of horses, which they would buy or agree to buy on their own account, but subject to Government inspection. When a number of horses were thus assembled at a designated place, word would be sent to the quartermaster's department in Saint Louis, by which an inspector would be dispatched to inspect, accept, and brand the horses. On the horses being thus inspected, accepted, and branded, the contractor would pay his subcontractors for them, and they would become the property of the United States. The act of the inspector in accepting and branding was always considered by the quartermaster's department, by the contractor, and by the subcontractors as binding upon the Government, and the vendors would then relinquish all control over the horses, and they would be forwarded at the risk of the Government to the general depot at Saint Louis.

The quartermaster's department would then issue to the contractor the usual vouchers.

III.

On or about the 1st day of October, 1863, an informal agreement was entered into between the quartermaster's department in Saint Louis and the firm of Finn & Co., whereby it was agreed that the latter should send out and buy horses and mules in Missouri, deliverable in Sedalia, for which they should receive $153.70 each. On or about the 10th of October, 1863, Finn & Co. notified the quartermaster's department that they had thus collected a number of horses and mules at Sedalia, and requested that an inspector be sent to inspect and receive the animals. The military department was then in great need of horses and mules, an exigency requiring their immediate purchase. Accordingly, Chief Inspector Finch ordered a deputy inspector to proceed as speedily as possible to Sedalia and inspect these. This deputy inspector did so, inspecting and accepting a large number, viz, 32 horses and 94 mules. Not having had time to bring the proper branding-iron with him, whereby horses and mules purchased by the quartermaster's department are usually branded U. S. on the left shoulder, he branded with a private brand on the neck the letter P, the purpose being to identify them. The agent for the contractors then paid the subcontractors for such animals as had passed inspection, and the deputy inspector and the contractor's agent, acting together, started the drove for Tipton, where they expected to get railroad transportation for them to Saint Louis. Before they reached Tipton they, together with 24 horses and 78 mules, were captured by the enemy; and for them neither the firm of Finn & Co. nor the claimant has been paid. No formal transfer or delivery of the animals took place before capture, nor did the deputy inspector assume to accept them on behalf of the Government, but his inspection and branding were mutually understood to be final.

IV.

The claim for the 24 horses and 78 mules, amounting to $15,677.40, was first presented to any executive officer by being filed in the office of the Quartermaster-General July 3, 1874. The Quartermaster-General decided adversely to the claim, and transmitted it to the accounting officers of the Treasury. On the 14th day of July, 1879, the Third Auditor disallowed the claim, and the Second Comptroller concurred. But on the 20th day of July, 1886, the Second Comptroller ordered that the case be opened, because of newly-discovered evidence produced by the claimant, and on the 13th of August, 1886, the Secretary of the Treasury transmitted it to this court, under the Revised Statutes, section 1063.

The petition was dismissed on the above facts, without an opinion, and evidently for want of jurisdiction.

As previously stated in this report, an appeal was taken to the Supreme Court, and the judgment of the Court of Claims affirmed. For this decision see appendix.

Your committee recommend that the bill pass.

APPENDIX.

[Supreme Court of the United States. No. 1008. October term, 1887. John Finn *vs.* The United States. Appeal from the Court of Claims. October 31, 1887.]

Mr. Justice HARLAN delivered the opinion of the court.

The plaintiff seeks judgment in this case against the United States for the sum of $15,678, as the value of certain horses and mules which he claims to have purchased for, and delivered to, the United States, at their special instance and request, on or about October 14, 1863. He also asks interest from that date on said sum at the rate of 6 per cent. per annum until his demand is paid. The claim was never presented to any Executive Department of the Government until July 3, 1874, on which day it was filed in the office of the Quartermaster-General. That officer decided adversely to it and transmitted it to the accounting officers of the Treasury. It was disallowed by the Third Auditor of the Treasury June 14, 1879, and in that ruling the Second Comptroller concurred. But on the 20th of July, 1886, the Second Comptroller ordered the case to be re-opened for newly discovered evidence produced by the claimant, and on the 13th of August, 1886, the claim, with all vouchers, papers, proofs, and documents pertaining thereto, was transmitted by the Secretary of the Treasury to the Court of Claims, under section 1063 of the Revised Statutes. The petition in the present suit was filed in that court on the 13th of October, 1886, and after a hearing upon the merits it was dismissed.

The Government contends here that the judgment should be affirmed, because it appears that the claim was not put in suit by the voluntary action of the claimant within six years after it first accrued, nor presented at the proper Department within six years after suit could have been commenced thereon in the Court of Claims.

The act of February 25, 1855, establishing the Court of Claims, invested it with authority "to hear and determine all claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract express or implied, with the Government of the United States, which may be suggested to by a petition filed therein; and also all claims which may be referred to said court by either House of Congress" (10 Stat., 612, sec. 1). This act did not authorize judgment to be entered against the United States, nor fix a period within which parties must assert their claims against the Government. The court was, however, required to report to Congress the cases upon which it acted, stating the material facts established by the evidence, with its opinion thereon (sec. 7).

But the act of March 3, 1863 (12 Stat., 765), enlarged the jurisdiction of the court, and, among other things, provided for an appeal from its judgment in certain cases to this court, and "that in all cases of final judgment by said court, or on appeal by the said Supreme Court, where the same shall be affirmed in favor of the claimant, the sum due thereby shall be paid out of any appropriation made by law for the payment and satisfaction of private claims on presentation to the Secretary of the Treasury of a copy of said "judgment," etc. The tenth section of that act is in these words:

SEC. 10. That every claim against the United States cognizable by the Court of Claims shall be forever barred, unless the petition setting forth a statement of the claim be filed in the court or transmitted to it under the provisions of this act within six years after the claim first accrues: *Provided*, That claims which have accrued six years before the passage of this act shall not be barred if the petition be filed in the court, or transmitted as aforesaid within three years after the passage of this act: *And provided further*, That the claims of married women first accrued during marriage, of persons under the age of twenty-one years first accruing during minority, and of idiots, lunatics, insane persons, and persons beyond seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted as aforesaid within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of said disabilities operate cumulatively" (R. S., sec. 1069).

By an act of Congress approved June 25, 1868 (15 Stat., 76), it was made lawful "for the head of any Executive Department, whenever any claim is made upon said Department involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases or furnish a precedent for the future action of any Executive De-

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court" (R. S., secs. 1063, 1064, 1065).

All these statutory provisions are
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In United States v. Lippitt (100 U.
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Wall., 125). It appears from the finding of
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tlement; and

the claimant, or be presented to the proper Department for settlement, within six years after suit could be commenced thereon against the Government. Under the appellant's theory of the case, the Second Comptroller could open the case twenty years hence, and, upon the claim being transmitted by the Secretary of the Treasury to the Court of Claims, that court could give judgment upon it against the United States. We do not assent to any such interpretation of the statutes defining the powers of that court.

The general rule, that limitation does not operate by its own force as a bar, but is a defense, and that the party making such a defense must plead the statute if he wishes the benefit of its provisions, has no application to suits in the Court of Claims against the United States. An individual may waive such a defense either expressly or by failing to plead the statutes; but the Government has not expressly or by implication, conferred authority upon any of its officers to waive the limitation imposed by statute upon suits against the United States in the Court of Claims. Since the Government is not liable to be sued as of right by any claimant, and since it had assented to a judgment being rendered against it only in certain classes of cases, brought within a prescribed period after the cause of action accrued, a judgment in the Court of Claims for the amount of a claim which the record or evidence shows to be barred by the statute, would be erroneous.

The judgment is affirmed.

True copy.

Test:

[SEAL.]

JAMES H. MCKENNEY,
Clerk Supreme Court United States.

The only doubt your committee have entertained was as to whether there had not been such laches upon the part of the claimant as should, if unexplained, preclude the granting of the relief sought. The claimant having been interrogated upon the subject, submitted to the committee the following communication, which is sworn to:

To the chairman and members of the Committee on Claims of the United States Senate:

In compliance with your inquiry as to why my claim was not presented to the proper Department or court sooner, I would respectfully state as follows:

That at the time the horses and mules were inspected and delivered to the Government in October, 1863, I was engaged in furnishing the quartermaster's department at Saint Louis, Mo., with large quantities of horses and mules under contracts that were imperative and stringent, and which required my immediate and undivided time and attention. I always had a contract to fill at short notice, or within a given number of days. At and after the time when the horses and mules for which this claim is now pending before your committee were inspected and delivered, and subsequently captured, I was engaged in supplying the Government with animals which were much needed, and in immediate demand for the use of the Army. I pressed a settlement of my claim for these horses and mules before the quartermaster at Saint Louis from time to time, but its settlement was delayed, and inasmuch as I was absorbed in complying with my contracts to avoid forfeitures and loss, I did not obtain a settlement and payment of the same during the period of the war.

When the war closed I had in my hands in consequence of my contracts a large amount of stock, say five hundred or six hundred head of horses and mules, and it took me some time to dispose of them in such way as to save myself from pecuniary loss.

I was also employed by the Government to sell and dispose of the stores, wagons, and other property that had been in use by the Army.

I then entered into a contract in the Department of the Platte to supply the soldiers and the Indians in that department with beef, cattle on the hoof, and other stores, from 1866 to 1870, which consumed my time during that period and prevented my looking after and proving up this claim, even if my witnesses could have been found.

After my return from the Department of the Platte, I again began to seek a settlement of this claim for horses and mules, and after applying time and again for a settlement, I was at last referred to the Quartermaster-General, and by him to the Treasury Department, where I learned that certain proof had to be presented in order to get my claim paid.

After a great delay, and the expense incident thereto, I found that the principal witness in my case was Henry C. Finch, the inspector who had inspected and received the animals, but I had not seen him since 1863, and to my great surprise he could not be found. I made every possible inquiry I could to ascertain his whereabouts. I wrote to his father and mother, who resided at Indianapolis, Ind., and to

his wife, who resided in the same State. I advertised for him or his whereabouts, but for about twenty years I got no account or trace of him. At the end of about twenty years he returned to his home in Indiana for the first time after the close of the war, and I immediately found him and took his deposition in my claim, which had then been transmitted from one place to another until it had reached the Court of Claims under the Bowman act. That court decided it had no jurisdiction, but the testimony of Finch was of sufficient importance to warrant the Second Comptroller in re-opening the claim; and, in doing so, he said that Finn had not been guilty of laches in presenting the evidence in his case.

I have been as vigilant in the prosecution of this claim as my bounden duties as a contractor to the Government and the other subsequent circumstances in the case would admit or warrant.

I did not know the legal effect of what is termed in law laches, nor had I any knowledge of a statute of limitations. Of laches I do not think I have been guilty, for there has never been a time when the collection of this claim was abandoned. It was pressed for settlement and payment at the quartermaster's department at Saint Louis, Mo. It has been presented for like purposes to the Quartermaster-General, the Treasury Department, and the courts.

In the courts, where my claim ought now to be adjudicated, I could get no relief because there was no jurisdiction on account of the statute of limitations.

I had not been guilty of laches in the Treasury Department as late as 20th July, 1886, because the accounting officers of that Department have so stated in their opinion. That is the Department where I originally anticipated the adjustment and payment of this claim. If I have been diligent there, where then have I been guilty of laches? In the courts?

It would not only be a hardship but an injustice to apply any such rule to this claim. I knew nothing of the statute of limitations. The Bowman act, under which my claim first went to the Court of Claims, was approved March 3, 1883, and its interpretation was not well settled in the minds of the lawyers nor by the rulings of the court.

The Committee on War Claims of the House, it may be said with all due respect, did not understand that the statute of limitations applied, or it would not, I think, have transmitted my claim to the court under the Bowman act. So I may say that my claim got into the court under the Bowman act under a misapprehension and misunderstanding all round. I prosecuted it there with vigor, and it was dismissed for want of jurisdiction.

Nor was the effect of the statute of limitations when applied to transmittal under section 1063 of the Revised Statutes more clearly understood. The claim was re-opened and certified by the Secretary of the Treasury to the Court Claims under the above section, and it was ascertained by the Supreme Court of the United States that the court had no jurisdiction. Again the claimant became the victim of a question that had been in doubt in the minds of the lawyers, if not of some of the judges. I again prosecuted the claim vigorously even to the Supreme Court and settled a mooted question of jurisdiction, which resulted in the dismissal of my claim. I am now simply asking as a matter of justice that I may have a day in court for the jurisdiction of my claim, and I have not been guilty of laches, because:

(1) I endeavored to obtain a settlement and the payment of said claim during the war, at the quartermaster's department at Saint Louis, Mo.

(2) I presented the claim to the Quartermaster-General as early as July, 1884, and urged its adjustment and payment before the proper accounting officers of the Treasury Department, the branch of the Government where I anticipated its payment, and where statutes of limitation do not apply to claims of this character, and the officers whereof have said that I have not been guilty of laches.

(3) I prosecuted my claim through the Court of Claims and in the Supreme Court with energy and diligence.

(4) Since the decision of the Supreme Court declaring the courts have no jurisdiction to adjudicate my claim, I have persistently urged upon Congress, at its present session, in person, the passage of a bill for my relief, granting to the Court of Claims jurisdiction to hear and determine my claim.

(5) I have never from the date of the accrual of the claim to the present time abandoned its collection, but have by all the means within my knowledge, and without negligence on my part, endeavored to procure the payment of the same.

Very respectfully,

JOHN FINN,
Claimant.

WASHINGTON CITY, *District of Columbia, ss:*

Subscribed and sworn to before me this 6th day of April, A. D. 1888.
[SEAL.] R. B. NIXON,
Notary Public.

The committee is of the opinion, in view of the explanation, that it is not more than just that the claimant should be permitted to try his case upon the merits in the Court of Claims.

The committee is also of the opinion that the delay of the claimant in prosecuting his case, until after the same was barred by the statute of limitations, ought to preclude him from a recovery of interest against the Government. They therefore recommend that the bill be amended by striking out of the fifteenth and sixteenth lines the following words: "with legal interest from the date the said claim first accrued."

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 117.

JOHN T. JOHNSTON.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MANSUR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3551.]

The Committee on Claims, to which was referred H. R. 3551, entitled "A bill for the relief of John T. Johnston," beg leave to report that a favorable recommendation was made to this House by this committee on a similar bill in the Fiftieth Congress (See House Report No. 1111). On January 27, 1888, the Hon. Joseph S. Miller, Commissioner of Internal Revenue, in a communication sent to this committee, said:

SIR: In reply to your request for the facts in regard to the claim of J. T. Johnston for services as deputy collector at Chillicothe, Mo., I have the honor to make the following statement:

The records of this office show that Mr. Johnston was appointed by late Collector R. T. Van Horn, of the sixth district of Missouri, as a deputy for the sale of stamps at Chillicothe without compensation, and acted in that capacity from September, 1879, to May 31, 1881.

It would appear both from letters of the collector to this office and reports of the inspecting officers that he was originally appointed solely for the accommodation of the firm of tobacco manufacturers of that place, Johnston, Fisher & Co., of which his son was senior member, but that he subsequently (after June 1, 1880) sold stamps to one or two cigar manufacturers.

It also appears in letters from this office to Collector Van Horn, dated August 22 and September 1, 1879, that it was stated that if there was a necessity for the appointment of Mr. Johnston at that place, the collector could make an application for allowance for his compensation if he thought best.

It does not appear, however, that any such application was made by Collector Van Horn or such an allowance granted. If such an allowance had been made it probably would have been at a rate of compensation not exceeding $300 per annum, the usual rate for such services.

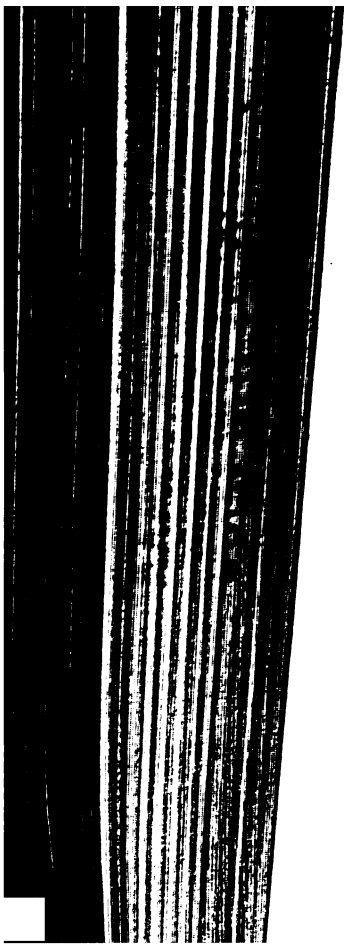
Under the provisions of law (sections 3145 and 3148, Revised Statutes, as amended) deputy collectors can be compensated for their services by the United States only upon allowances granted by the Secretary of the Treasury therefor, but no such allowance can be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered.

From the above it appears there is no authority of law for the payment of the claim of Mr. Johnston, nor is there now any appropriation available for this purpose.

Respectfully,

JOS. S. MILLER,
Commissioner.

Mr. Johnston's statement is to this effect: That after serving some time without compensation, finding that divers parties other than the Johnston Tobacco Company supplied themselves with stamps through his office, rather than send or apply to the main office of Hon. R. T. Van Horn, at Kansas City, Mo., 97 miles away, and that it was a public convenience to maintain the office at Chillicothe, he wrote



rate, to wit, $300, is very ne
Your committee therefore
ably, and that the bill do pa

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 118.

WILLIAM J. MARTIN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Mansur, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1892.]

The Committee on Claims, to whom was referred the bill (H. R. 1892) for the relief of William J. Martin, of Oregon, have considered the same and respectfully report:

That they find all the substantial facts set forth in Senate Report No. 84, first session Fiftieth Congress, which said report was afterward adopted by this committee in the Fiftieth Congress, first session (see H. R. No. 3375), and being still satisfied with said Senate report, do adopt the same as their own.

[Senate Report No. 84, Fiftieth Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 728) for the relief of William J. Martin, of Oregon, have considered the same, and respectfully report:

That the facts in this case are fully set forth in the report made by this committee upon a similar bill at the second session of the Forty-ninth Congress, which report is as follows, with the exception of a clause relating to interest, the claimant in the bill under consideration not asking for interest:

"The evidence on file tends to establish the following facts:

"That in the year 1849 First Lieut. G. W. Hawkins, acting quartermaster U. S. Army, stationed at Oregon City, Oregon Territory, entered into a contract, in writing, with the claimant for the delivery of 96,000 pounds of beef at Fort Hall, Utah Territory, for the use of what was known as the Rifle Regiment, en route to said fort, under command of Colonel Loring, agreeing to pay therefor 12 cents per pound on foot, and assuming unavoidable losses which might be sustained on the trip by reason of the depredations of Indians; that the said lieutenant, as agreed, advanced on the contract the sum of $2,500 to assist in the purchase of the beef cattle, and further advanced, by way of payment to drivers and herders, $1,500; that the claimant, proceeding under the contract, purchased 122 head of cattle of one A. J. Hembrie, of Yamhill County, in the Territory of Oregon, and employed to assist in driving the same William Rogers, E. Horner, and G. W. Garrison, the latter being killed by Indians en route; that the expedition when ready consisted of the beef cattle, twenty-two wagons loaded with quartermaster stores, under one Joel Palmer as wagon-master, and a large number of loose horses, the whole being under the supervision of the claimant, with Lieutenant Hawkins as commander; that the expedition set out from Yamhill County on the 4th of July, 1849, reaching Fort Hall the last of September of said year; that the cattle were stampeded en route by the Indians and twenty-two head were lost; that twelve head were ordered by Lieutenant Hawkins to be killed for the use of the expedition and for destitute emigrants; that the remainder, eighty-eight head, were turned over immediately on the arrival of the expedition at Fort Hall to Lieutenant Russell, acting quartermaster at said fort; that at the time of the delivery of the cattle neither Lieutenant Hawkins nor Lieutenant Russell had funds with which to pay for them; that Lieutenant Hawkins gave claimant an order on Judge Bryant, then Territorial judge, residing at Oregon City, for the amount; that upon presentation of said order to Judge Bryant claimant was informed that Lieutenant Hawkins had deposited no money with him for that or any other purpose, and that he could

the custom; that the written con
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under the contract was $11,520, on
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State of Oregon, in the year 1863.

"To this statement of facts the
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and during the rebellion, but since its clo
affidavit, by which he seeks to explain a
1850 he wrote to General Wool, at San
stating his case and asking for settlement
Hawkins recovered; that he sent his br
quartermaster; that in 1852 he employed I
to prosecute the claim; that Mr. Logan co
pressed the matter

request, to see the Quartermaster-General at Washington upon the subject, and was informed by that officer that he would receive evidence in support of the claim; that at that time he was not able to find the parties whose testimony was required, except Mr. Mark Hatton.

"The committee is of the opinion that while the evidence, being by affidavit, and therefore *ex parte*, is perhaps not such as to justify an appropriation by Congress of the amount claimed, it is nevertheless sufficient to entitle the claimant to a hearing it the Court of Claims. The committee is also of the opinion that the claimant should not, considering the character of the country in which he lived, and its remoteness from Washington, the illness of the officer with whom he dealt, the consequent want of vouchers, the Indian wars, and the rebellion, and the efforts he made, be deprived of his day in court because of the staleness of his claim.

"The bill refers the claim to the Court of Claims for adjudication and provides for the entry of judgment for such amount as may be found due under the contract."

Your committee therefore recommend that the bill pass.

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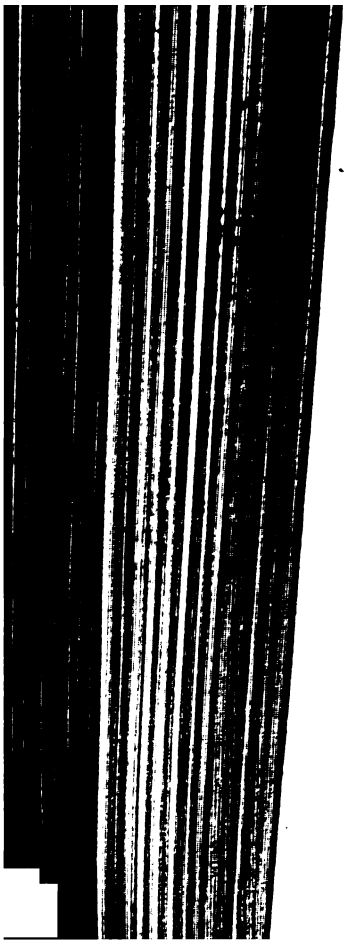

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 119.

BRIG TALLY HO.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MANSUR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1035.]

The committee to whom was referred the bill H. R. 1035, entitled "A bill to refer the claim of the owners of the brig *Tally Ho* to the Court of Claims," have had the same under consideration and beg leave to state that a similar bill was introduced at the last (Fiftieth) Congress and was favorably reported upon.

Your committee being still satisfied with said report, adopt it anew as their own and recommend that the bill do pass with an amendment, to wit: At the end of line 8 insert the words "Nothwithstanding the lapse of time."

[House Report No. 626, Fiftieth Congress, first session.]

The United States steam vessel of war *Pinta*, on the night of October 3, 1883, collided with and sunk the coal-brig *Tally Ho*, off the coast of Massachusetts. The Navy Department ordered a court of inquiry, which on investigation decided that the war vessel was at fault. Thereupon the Secretary of the Navy referred the case to the Court of Claims for investigation under the provisions of the second section of the act of March 3, 1883 (22 Stat. at Large, p. 485), commonly known as the "Bowman act." Whereupon the legal owners of the said brig on the 27th of July, 1884, filed in the Court of Claims their petition setting forth the loss of said brig by said collision.

Pending a trial of the case, and after much evidence had been taken and filed in the cause, the said Court of Claims decided in another case, also pending in said court, of a collision between a United States vessel and the schooner *Abbie Pitman*, which case had also been referred under the "Bowman act," that collision cases could not be referred to the Court of Claims under that act, and consequently, that the court had no jurisdiction over the case of the *Abbie Pitman* (20 Court of Claims Reports, p. 253). This decision will necessarily require the dismissal of the claim in the case of the *Tally Ho*, but the bill now proposed, if it becomes a law, will enable the court to take jurisdiction of that case and proceed with the hearing and determination of the same upon its merits, in the same manner as if the reference of the case to the Court of Claims had been authorized by an act of Congress before any proceedings had been had therein in said court, and will permit the claimants to use the testimony already taken in the case.

Your committee recommend that the bill do pass.

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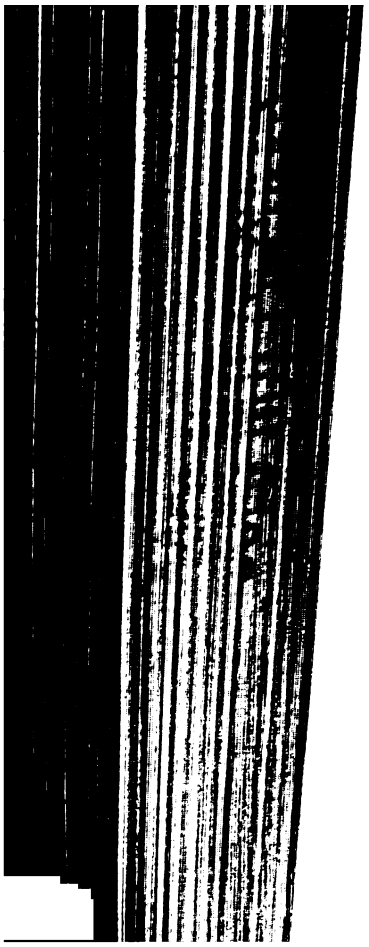

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 120.

JOHN S. LOGAN, ASSIGNEE.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MANSUR, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 5588.]

The Committee on Claims, to whom was referred the bill (H. R. 5588) for the relief of John S. Logan, assignee, have had the same under consideration, and report the same favorably, as this committee also did in the Fiftieth Congress, first session (see H. R. 1927), but with this amendment to the pending bill, to wit, insert after the word Logan in the fifth line the words "assignee of the Western Bank of Missouri."

[House Report No. 1,927, Fiftieth Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 7105) for the relief of John S. Logan, having had the same under consideration, report:

This bill was favorably reported at the first session of the Forty-fourth Congress to the Senate, and passed by that body on December 12, 1876; that it failed in this body to be reached. At the second session of the Forty-sixth Congress it was again favorably reported to the Senate, and it has been almost continuously before Congress ever since.

On the 23d day of September, 1861, a regiment of Iowa troops, under the command of Col. John Edwards, then denominated "Edwards's Independent Iowa Regiment," was stationed in St. Joseph, Mo., for the purpose of holding that section of the State of Missouri against a threatened invasion by forces from Price's army after the battle of Lexington. The command was suffering for want of clothing and shoes, and its provisions were exhausted. Hurriedly brought into the field, the regiment was not provided with funds to purchase supplies, and there seems to have been no known enemy in reach from whom supplies could be captured.

In this condition the Western Bank of Missouri, doing business in that place, and of which John S. Logan afterward became the assignee, was applied to by the commissary and colonel of said regiment for money with which to purchase said supplies. The case was urgent. The colonel and commissary represented, truthfully, we doubt not, that they had the authority to draw their draft on the treasurer of the State of Iowa for the money the regiment needed, and they did so draw for $1,000, and said bank took the draft and advanced the par value thereof to said regiment. There is no question but that the bank paid the money and that it was used in purchasing supplies for the men of the regiment. The bank has never been repaid any part of this money, and the State of Iowa has failed to pay it.

C. L. Kellogg, now a respectable citizen of Adams County, Ill., testifies, under oath, that during the months of August, September, and October, 1861, Colonel Edwards marched his command into the State of Missouri to combat and drive away a large body of Confederate forces, then drilling in that State and harassing the Union people along the northern line thereof, driving many of them from their homes into Iowa for safety. That Edwards's command numbered some 1,400 men, rank and file; that said troops marched into St. Joseph and one-half remained there, while the other half, under the command of Lieut. Col. George H. Howley, was sent to Chillicothe, Mo.; that he was quartermaster and part of the time commissary of said regiment; that the troops left their homes in Iowa hurriedly, with nothing but the suits they wore, and that by the time they reached St. Joseph a change of underclothes was demanded by every consideration of health and comfort; that the men were

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do pass with the following amend
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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 121.

DAVID MITCHELL.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Mansur, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4367.]

The Committee on Claims, to whom was referred the bill H. R. 4367, have had the same under consideration, and, with certain amendments hereinafter stated, report it back with the favorable recommendation that as amended it do pass.

A similar bill was introduced in the Fiftieth Congress, and this committee at its second session in that Congress reported the same back with a favorable recommendation "that it do pass."

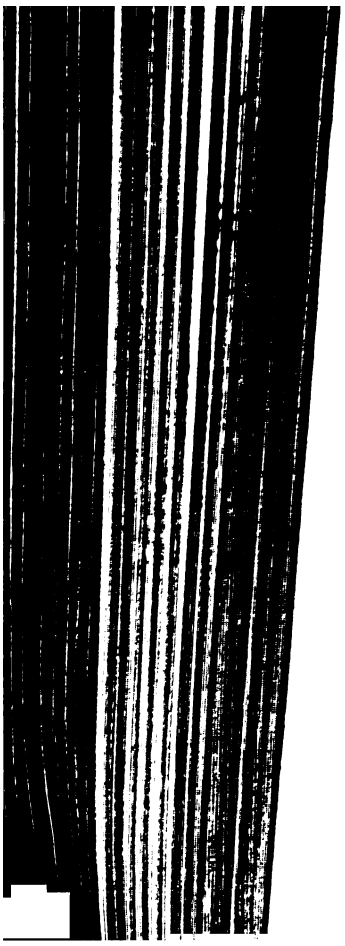
Your committee being well satisfied with said report adopt it as their own, but before submitting it beg to call the attention of the House to the following letter from Rufus Saxton, late Assistant Quartermaster-General, U. S. Army, addressed to the chairman of the Committee on Claims:

Washington, D. C., *December* 13, 1889.

Dear Sir: At the request of Mr. B. H. Mitchell, I have the honor to state in the matter of his claim for corn delivered to the United States at Fort Harker between November, 1868, and May, 1869, that I concur in the views of the majority of the Committee on Claims, House of Representatives, January 12, 1889, as set forth in their report, and trust that it will meet with the prompt approval of Congress.

At the time Mr. Mitchell's claim was referred to me for investigation and report, I made as careful an examination into all the circumstances of the case as I could with the data in my possession at that time.

In view of the additional evidence furnished by Mr. Mitchell and an examination of Captain Turner's returns in the Third Auditor's Office, my judgment now would be modified very materially, and I am unwilling that my report should operate in any manner to the detriment of his claim.



The amendments recomm
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The report of the House
lows:

House Report No. 3685, Fiftieth Congress, second session.

JANUARY 12, 1889.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MANSUR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2249.]

The Committee on Claims, to whom was referred the bill (H. R. 2249) for the relief of D. H. Mitchell, have had the same under consideration and report it back with the recommendation that it pass, with amendments.

David H. Mitchell, a resident of Leavenworth, Kans., was, prior to the year 1868, at divers times a contractor of the Federal Government, for the delivery of grain for the use of troops engaged upon our frontier. It would seem from a mass of papers submitted that Mr. Mitchell is a man of loose business habits and never kept his own accounts with the Government, but depended entirely upon the books kept and records made by the various officers of the Quartermaster's Department with whom he did business; and in this report all statements of grain furnished, except weights and the times when and places where delivered, are taken from the various reports made by the officers of the Government.

Upon inquiring of Mr. Mitchell as to why he kept no papers or accounts he stated that prior to the difficulties that led to this controversy he had always found the reports of the officers of the Quartermaster's Department correct and satisfactory to him, and that he had simply drifted into the habit of permitting them to do all the book-keeping.

Mr. Mitchell claims $19,939.26 for corn delivered between November, 1868, and May, 1869.

The origin of this claim may fairly be said to grow out of a modification of a contract entered into by Mr. Mitchell with the Government of the United States dated November 9, 1868, for the delivery of 16,000 bushels of oats at Fort Harker, Kans., a copy of which contract may be seen in the appendix filed with this report.

During that winter General Sheridan was preparing for a campaign against the Indians of western Kansas, and was in need of large amounts of grain and forage, and his necessities were imperative. Owing to bad weather and bad roads, it became impossible for Mitchell to get oats transported to the railroad fast enough to supply the demands of the Government. Mitchell had at that time large amounts of corn stored at various points along the railroad. Lieutenant Cook was acting quartermaster as a substitute for Major Inman, who was at the time in the field with General Sheridan.

Lieutenant Cook, with the knowledge and approval of Major Inman authorized Mitchell to fill the said contract with corn in lieu of oats, a

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was only 400,666 pounds, whic
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the corn had cost him more
should be paid the excess of i
profit and expense; and on th
of $1,956.19.

The testimony appertaining
mainly of record. The varion

ber of car-loads shown to have been delivered by the railroad company for and on account of Mitchell to the Government authorities at Fort Harker. From the testimony of agents who are impartial and without any interest in the matter we believe that substantial justice can best be done by taking the estimate of the several car-loads at 24,000 pounds per car-load than in any other way.

Many of the difficulties environing this case grow out of the fact that Mr. Mitchell, for a time, sought to claim that the corn was delivered to the Government under a modification of the contract of November 9, 1860, which called for oats only.

The position of the Government may be stated in the language of a report made by Major-General Swayne to the Secretary of War, of date January 11, 1870, as follows:

> That the agreement of the acting quartermaster to receive corn in lieu of oats, about the amount of which there is some doubt, was in no sense binding on the United States. The Court of Claims have repeatedly held that the law of general and special agents is applicable to superior and inferior agents in the matter of contracts in their relation to the United States and to the public. The special agent can not exceed the regulations of his principal, nor the inferior officer the regulations of his superior.

The foregoing is conclusive in its application to this case, says Major-General Swayne, and his report in its entirety was approved by the honorable Secretary of War.

Mr. Mitchell brought his suit in the Court of Claims to determine his rights in this matter, which suit was finally adjudicated in 188—. See vol. 19, Reports Court of Claims, p. 39, in which it was held as follows:

> There is but a single question of law involved, and that arises upon these facts concisely stated. The contract expressly provided that it should be subject to the approval of both the commanding general of the Division of the Missouri and the commanding general of the Department of the Missouri. It was so approved and was also approved by General Easton, the superior officer of General Card. It was clearly the purpose of that provision to secure to the high commanding officers a supervision over the matter and to control or prevent the making of such a contract on the part of an inferior officer, if they or either of them saw fit to do so. When thus made the contract could not be afterwards altered by any officer inferior to those whose approval had been necessary in the first place to give it validity. They were the officers who were acting for the United States in giving the consent of the defendants to the terms of the contract, and none below them in authority had a right to change the terms of their agreement. And yet the post quartermaster at Fort Harker, who was but a receiving officer to take such oats as the contractor had agreed with his superior officer to deliver at that post, entered into an oral agreement with the claimant that he might deliver corn instead of oats at the same price per bushel of 32 pounds as he was to be paid for oats. Upon this oral agreement thus made the claimant relies as establishing the price to which he was entitled for all the corn delivered.
>
> In the South Boston Iron Company's Case (18 C. Cls. R., 165), we held that this provision requires a formal written contract in every case to be signed by the parties at the end thereof, and that not even written correspondence containing proposals on the one side and acceptance on the other, separately signed by the respective parties, is sufficient to make a valid contract.

It will thus be seen that the decision of the Court of Claims, however thoroughgoing and valuable as to technical and legal considerations, by no means involves the justice of the claim as to any surplus over and above the 400,666 pounds of corn which alone is in controversy in this claim. The fact is patent that Mr. Mitchell, whether by due authority or not of the acting officers of the Government, in an emergency both of time and peril to our troops upon the frontier, obeyed their directions and did furnish a large amount of corn, which was received and used by the officers of the Government and, as your committee believes, has not yet been fully paid for. For whatever amount may yet be found due for the corn thus furnished and used by the Govern-

ment there can be no doubt that the dignity and honor of the Government alike demand that a fair compensation for all the corn so furnished should be paid, even at this date, to Mr. Mitchell.

Your committee therefore shall not attempt to discuss the question whether the adjudication made by the Government on this case in the Court of Claims was adequate or inadequate, or whether Quartermaster-General Easton in his findings and instructions to his subordinate officers to refuse to issue vouchers for it, as not being in compliance with the contract to deliver oats, is correct or incorrect; or whether the surplus delivery at Fort Hays, amounting to 65,100 pounds, on a contract for the delivery of 10,000 bushels of corn made the same day with the oats contract at Fort Harker, should be paid for at contract rates or not; but we are content with the position that the Government, having received and used Mr. Mitchell's corn, should in justice pay for the same, and this upon the doctrine of an implied assumpsit independently of any written contract. (Burchill's Case, 4 C. Cls. R., 549; Heathfield's Case, 8 C. Cls. R., 213; Solomon's Case, 19 Wall., 17, and 9 C. Cls. R., 54.)

This claim has been prolific of litigation. Mr. Mitchell was indicted in the United States court of the district of Kansas under the charge of presenting fraudulent vouchers for corn delivered at Fort Harker, which it was alleged had already been paid for in the 400,666 pounds settled for by the Secretary of War at $1.25 per bushel. Mr. Mitchell was convicted and sentenced to pay a fine of $1,000. Afterwards, upon an elaborate investigation by the authorities at Washington and upon the advice of the Attorney-General, Mr. Mitchell was pardoned by the President of the United States and the $1,000 fine which he had paid was refunded to him, the Government being fully satisfied from its own investigation that if there was anything in the conviction it was the result of a mere error in presenting a voucher for corn at a time antedating certain payments made to him by the Government, and it was a harmless mistake on the part of Mr. Mitchell, arising out of the fact, as stated by your committee at the beginning of this report, that he was an unlettered man, kept no accounts, and depended almost entirely upon the books, accounts, and records kept by the Government through its Quartermaster Department; it being practically conceded by the Government, by the finding of its own officers upon the investigation made by them, that there were other large amounts of corn received by the Government for which no payment had yet been made to Mr. Mitchell. It may be also said that in 1872 Major Inman, the quartermaster in charge, and under or with whom all this business was done, was tried and court-martialed by the Government on charges of embezzlement and irregularities in his book-keeping.

Inasmuch as, according to the custom prevailing with your committee, no interest will be allowed to Mr. Mitchell for the long period of time that has elapsed since the furnishing of this corn, your committee feels disposed to be fairly liberal in its estimates of the amounts furnished and of the price that was paid to him.

The hardest problem your committee have to solve in this case is the amount of corn delivered by Mr. Mitchell, and not yet paid for. It is admitted by Mr. Mitchell that he has been paid for 400,666 pounds, at $1.25 per bushel. There are many conflicting and contradictory statements certified to your committee, and coming from the property returns of Maj. Henry Inman. In one place he states that the amount of corn received in the month of January, 1869, was 349,744 pounds. In another it is given as 331,000 pounds. In other places a less amount is given. In

some statements no return is shown for deliveries of corn in the months of February and March, 1869, but in other statements returns are given, not unfrequently conflicting returns. The telegrams sent from Fort Harker at this period by the subordinate officers to their superior officers at Fort Leavenworth exhibit many conflicts with the property returns taken from Captain Inman's purchase-books. Therefore your committee have decided to discard all statements emanating from the books and property returns of Major Inman and adopt the car-load method of arriving at the aggregate amount of grain shipped by Mitchell to Fort Harker.

We find from copies of bills of lading furnished by the Union Pacific Railroad that Mitchell shipped between November 21, 1868, and March 6, 1869, twenty six car-loads and 360 bushels of corn. We also find that John A. Gaston, in his deposition taken at Deadwood, Dak., December 14, 1881, testifies twice that he shipped for Mr. Mitchell to Fort Harker, Kans., from Leavenworth, Kans., either seven or eight car-loads of corn, and reiterates the second time that he thinks this was before January 1, 1869. He further states that all his books and papers were destroyed by fire, and that he can not produce records relating to this matter, but gives his testimony solely from memory. He testifies that his residence was Leavenworth, Kans., and that he was engaged in the grain business there at the time. A careful examination of all the bills of lading referred to (twenty-six full car-loads and several partial car-loads) show that they relate to corn shipped from other points in Kansas and none of them embrace corn shipped from Leavenworth. For safety, taking seven car-loads, the least number testified to by Mr. Gaston, added to the twenty-six full car-loads, including also the 360 bushels shipped in three different cars with oats, making about one car-load, that Mr. Mitchell furnished thirty-four car-loads of corn in all.

It is within the knowledge of divers of your committee that, in common parlance, 400 bushels of corn, at 56 pounds to the bushel, constitute an ordinary car-load. This of itself would be 22,400; but we have the positive evidence of Mr. Zimmerman that he remembers that these cars averaged 24,000; and when we consider that the evidence shows great difficulty in getting cars to use on the Union Pacific Railway at that time, and the urgent press and necessity to ship it as rapidly as possible, we can see reasons that would induce heavy loading of the cars. In addition to this, we have this fact that Mr. Mitchell had shipped six car loads of corn to Fort Hays on the same road, 70 miles farther out, and that he applied to Major Easton to buy this corn, which was in excess of a contract on Mr. Mitchell's part. Quartermaster-General Easton telegraphed back to take the same. This was on February 10, 1869. General Easton afterwards, on March 15, 1869, telegraphed back that when he agreed to receive six car-loads he meant at the rate of lading fixed by the railroad company, at 18,000 pounds—108,000 pounds for the six car-loads—and refused to authorize a voucher to be received for the quantity contained in the six cars over and above the 108,000. The said six cars actually weighing the amount of 173,600 pounds, which, divided by 6, shows that each car had about 29,000 pounds.

It is true that General Easton states in his letter that this is a larger amount than can be loaded on a car; yet, it would seem, from his own letter, that the real reason why he declined the extra amount was that the price of corn at that time had fallen and that he could obtain it at a less cost than taking it at the price of the contract entered into with Mr. Mitchell.

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during this same period, to w

I was a Government contractor du
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business. * * * At that time th
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Also this extract from the ev
Union Pacific Railroad Compan
to wit:

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(*i. e.*, from service in the field), or hav
partment, the names of the deliverers
by the Government?—A. I think ther
pression that it was.

And again—

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came persistent for a larger amount t

This refers to voucher for Dece
1869, for 352,009 pounds corn,
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Again, Mr. Addison Jones, w
records of the Union Pacific Ra
ply to the question, "What was
car at that time:"

The tariff book at that time

Quartermaster-General Easton was only willing to allow him $1.01 per bushel. It will be observed, from the tenor of this report, that your committee declines to enforce, as legal, the understanding reached between Mr. Mitchell and Lieutenant Cook, as ratified by Major Inman, but puts the liability of the Government upon the simple ground of an assumpsit, and that the Government having used the corn, should pay its reasonable value at that time for the same. Under these circumstances, your committee believe that the price per bushel paid for 400,666 pounds of corn by the order of the honorable Secretary of War was just and correct, and the amount must be deducted from the total amount that may be found hereafter to be contained in the thirty-four car-loads; and under all the circumstances of this case, looking at it in a spirit of equity and justice for the Government and for Mr. Mitchell, we believe this to be a fair price, and therefore recommend that he be allowed $1.25 per bushel. The claim then would stand as follows:

Thirty-four car-loads, at 24,000 pounds each, make the amount of 816,000 pounds; take from this 400,666 pounds, for which he has been paid, and there remains 415,334 pounds, or 6,416 bushels and 32 pounds, which, at $1.25 per bushel, was worth $9,260.85.

This aspect of the case disposes of the claim of Mr. Mitchell for $1,956.19, which amount is not found in his favor.

Your committeee also report adversely on the item $1,323.16, which amount it is claimed by Mr. Mitchell was withheld by the Government on a later contract of his for wood, delivered at Fort Wallace, Kans., in A. D. 1875, as your committee do not find the preponderance of evidence in his favor to overturn the showing of the Government that he had been twice paid this sum, for the same corn, to wit, once as an independent payment for corn, and again, for same corn as a part of the 400,666 pounds paid for by order of the Secretary of War in January, 1870.

Your committee recommend that the bill be amended by inserting in the first blank in line 6 the words, "nine thousand two hundred and sixty and eighty-five one-hundred," and again amended by striking out the word "bushels," in said line 6, and substituting therefor the words "thirty-four car-loads," and again amend by striking out in line 7 the words "and —— bushels of oats," and the other words "under contract;" and that it be further amended by striking out all that part of the bill remaining, commencing on line 12, with the words, "and the farther sum, &c."

D. H. MITCHEL
vs.
THE UNITED STATES.

This contract, made and en
day of November, in the year
eight, by and between B'v't B
chief quartermaster Departm
States of America, of the first
Leavenworth, State of Kansas,

That the said D. H. Mitchell
ten thousand (10,000) bushels
other foreign matter, and secu
third ($\frac{1}{3}$) of the quantity contr
one-third ($\frac{1}{3}$) on or before Nove
before December fifth (5th), 186

And the said party of the seco
subject to the inspection, accept
Kansas, or such person or person
presented for delivery under this
is hereinbefore stipulated to be f
said party of the second part sh
proper character in place thereof
of the second part in the time of
visions of this contract, the said
deficiency that may exist by pu
may elect, and the said party of
in cost.

And it is further hereby expres
ties to this contract, that if defa
the said party of the first part shal
lated to be paid to the said party
sary to indemnify the said party
any defects and deficiency in the
party of the second part.

The said party of the first pa
States of America, to pay or cau
such funds as may be provided b
dollar and sixty-nine cents ($1 69
of corn delivered and accepted in
lows, to wit: As often as the qua
two thousand (2,000) bushels or
the quarter

such assignment, the party of the first part shall have the option to regard the same as an abandonment thereof, and the said party of the second part, and his sureties, shall be held responsible for any loss or damage that may ensue to the said party of the first part by reason of such abandonment; and any sum or sums of money due or to become due the said party of the second part by the United States of America shall be held and applied to satisfy such damage.

Upon mutual agreement this contract may be changed, altered, modified, or abrogated in whole or in part.

This contract is subject to the approval of the commanding generals of the Department of the Missouri and Military Division of the Missouri.

It is expressly understood by and between the parties to this contract that no member of Congress shall be admitted to any share or part therein, or any benefit to arise therefrom.

In witness whereof the said parties have hereunto set their hands and seals, on the day and year first above written.

BENJ. C. CARD. [SEAL.]
B'v't Brig. Gen'l U. S. A., Acting Chief Q'rm'r Dep't Mo.
D. H. MITCHELL. [SEAL.]

Witnesses:
O. C. SPOOR,
CHARLES SPRINGER.

[Indorsements.]

[1119, H'dq'rs Dep't Mo., 68.]

HEADQUARTERS DEPARTMENT OF THE MO.,
Fort Leavenworth, Kas., November 19th, 1868.

Approved.
By command of Major-General Sheridan.
(Stamp:) Received Nov. 19, 1868, Q. M. O. Dep't Mo.

W. C. EMBRY,
Brev. Lieut. Colonel U. S. A., Acting Ass't Adj't General.

HEADQUARTERS M. D. MISSOURI,
OFFICE CHIEF Q'RMASTER,
Saint Louis, Mo., Nov'r 23, 1868.

Approved.

L. C. EASTON,
Deputy Q'rm'r General U. S. A., Acting Chief Q'rm'r M. D. Missouri.
By C. W. THOMAS,
B'v't Lieut. Col. and A. Q. M., U. S. A.

HEADQUARTERS M. D. MISSOURI,
Saint Louis, Mo., Nov'r 23, 1868.

Approved.
By command of Lieutenant-General Sherman.

W. A. NICHOLS,
Ass't Adj't General.

Bk. 13, W. 1417; Bk. 13, W 1458.
(Stamp:) Received Dec. 4, 1868, C. Q. M. O., Dep't Mo.

"D" C 1112. C. 11 Jan'y, '70. Contractor. Contract. B'v't Brig. Gen'l B. C. Card, U. S. A., Acting Chief Q'rm'r, Dep't Mo., with D. H. Mitchell, for the delivery of 10,000 bushels corn at Hay's City, Kansas, dated November 9, 1868; bond, $6,000; sureties, Lucien Scott, D. W. Sowers, Leavenworth, Kansas. 588 M. (M. D. Mo.), 1868, 124-1023.
[Stamp:] Q'rm'r Gen's office. Received Jul. 5.

This contract, made and entered into at Fort Leavenworth, Kansas, on this ninth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Bvt. Brig. Gen'l B. C. Card, ass't q'rm'r, U. S. Army, acting chief quartermaster, Department of the Missouri, for and on behalf of the United States of America, of the first part, and D. H. Mitchell, of the city and county of Leavenworth, State of Kansas, of the second part, witnesseth:

That the said D. H. Mitchell agrees to furnish and deliver to the quartermaster at Fort Harker, Kansas, sixteen thousand (16,000) bushels oats of the best quality, free

contract, the said party c
that may exist by purchasing
the said party of the second p

And it is further hereby ex
ties to this contract that if d
the said party of the first par
stipulated to be paid to the sa
essary to indemnify the said p
and any defects and deficienci
said party of the second part.

The said party of the first par
of America, to pay or cause to l
funds as may be provided by
seven (87) cents for each and ev
and accepted in accordance w
often as the quantity of oats del
bushels or more, certified accou
Fort Harker, which shall be pai
souri, as soon as he shall have
first two thousand (2,000) bushel
ferred until the contract is filled.
part shall have the power to ret
until the completion of this co
thereof.)

It is further expressly covenant
that this contract is not assignab
such assignment, the party of the
as an abandonment thereof; and
shall be held responsible for any l
the first part by reason of such ab
to become due the said party of
shall be held and applied to satisfy

Upon mutual agreement this co
gated in whole or in part.

This contract is subject to the ap
ment of the Missouri and Military

It is expressly understood by and
ber of Congress shall be admitted t
therefrom.

In witness whereof the said partie
day and year first above written.

Bvt. Brig

Witnesses:
O. C. Spoor,
Charles S...

HEADQUARTERS M. D. MISSOURI,
OFFICE CHIEF Q'RMASTER,
Saint Louis, Mo., Nov'r 23, 1868.

Approved.

L. C. EASTON,
Deputy Q'rm'r General U. S. A.
Acting Chief Q'rm'r, M. D. Missouri.
By C. W. THOMAS,
Bvt. Lieut. Col. and A. Q. M., U. S. A.

HEADQUARTERS M. D. MISSOURI,
Saint Louis, Mo., Nov'r 23, 1868.

Approved.
By command of Lieutenant-General Sherman.

W. A. NICHOLS,
Ass't Adj't General.

[Stamp:] Received Dec. 4, 1868. Q. M. O. Dep't Mo.
Filed May 15, 1878.
Rec'd., M. D. Mo., Nov'r 27, 1868.

"A." C. № 1111. C. 11 Jan'y, '70. Contractor. Contract. Bvt. Brig. Gen'l B. C. Card, U. S. A., acting chief q'rm'r, Dep't Mo., with D. H. Mitchell, for the delivery of 16,000 bushels oats at Fort Harker, Kansas, dated November 9, 1868. Bond, $5,000. Sureties: Lucien Scott, D. W. Sowers, Leavenworth, Kans. 595M. (M. D., Mo.), 1868. 12-1403. 124-1023. Bk. 13, W. 1417. Bk. 13, W. 1458.

UNITED STATES OF AMERICA:

Before Gen. R. Saxton, chief q. m., Department of Missouri.

DAVID H. MITCHELL
vs.
THE UNITED STATES.

Statement of claim.

David H. Mitchell, claimant, complains of the United States, and says that the Government is indebted to him in a large amount for corn furnished to the Government at Fort Harker, Kansas, between November 9th, 1868, and April 20th, 1869, as follows:

On the 9th day of November, 1868, Mitchell entered into a written contract with the Government to furnish to the Government, at Fort Harker, sixteen thousand (16,000) bushels of oats, at eighty-seven (87) cents per bushel, of thirty-two (32) pounds to the bushel, a copy of which said contract is hereto attached, marked Exhibit A, and made a part of this statement; that, in pursuance of this contract, Mitchell commenced to furnish said oats; that at the time a campaign was being carried on against the Indians, and the demands and necessities of the Government became imperative for an increased amount of forage; that, owing to the condition of the roads through the country, it was impossible for Mitchell to get oats transported to the railroad track fast enough to supply the increased demand of the Government; that Mitchell had at the time large amounts of corn stored at various points along the railroad line, and could easily procure other large amounts; that Captain Henry Inman was chief q. m. of the department, with headquarters at Fort Harker, but he himself was with the forces in the field, and his duties were being temporarily performed by Lieutenant Cook; that Lieutenant Cook instructed Mitchell to fill his said oat contract with corn, at the same rate per pound that he was receiving for oats, it being considered at that time that a pound of corn was worth as much as a pound of oats; that, in pursuance of such permission and instruction of said Lieutenant Cook, Mitchell proceeded to furnish a large amount of corn; that he shipped from Fairmount Station, on the Kansas Pacific Railroad, twelve (12) car-loads of corn; from Williamstown thirteen car-loads; from Grantsville two car-loads, as shown by the statement of S. F. Smith, auditor of the Kansas Pacific Railroad Company, which is hereto attached, marked Exhibit B, and made a part hereof; that three cars were shipped by one R. S. Griffith from Lawrence in his own name, but the same was shipped on account of Mitchell, and received by the Government at Fort Harker on account of Mitchell (see affidavit of R. S. Griffith, market Exhibit C, and affidavit of said Mitchell, marked Exhibit D); that one ——— Burnell shipped four car-loads of corn from Grantsville in his own name, but the same was shipped on account of said Mitchell, and was received by the Government at said Fort Harker on said

...thousand (24,000) pounds to the ... thirty-
sand (816,000) pounds of corn furn
under the arrangement of said Li
the Government and used by it.

And Mitchell further says that
States payment for four hundred
pounds of said corn and no more;
bushel of 56 lbs. This payment
See copy of voucher hereto attache
ell further in this connection says,
on the purchase books of said Capt
had received payment for forty-eig
pounds more of this corn taken a
contract, but Mitchell thinks and b
from said purchase book and the fa
at the time had on hand at said For
and above the full amount of his said
received pay for of said corn is as ab
six hundred and sixty-six (400,666)
Thomas. This leaves a balance unp
the arrangement made by Mitchell w
rate of eighty-seven (87) cents per b
would amount to 12,979$\frac{3}{16}$, which at ei
amount to the sum of eleven thousan
lars, which sum Mitchell claims is du

Mitchell further says that if the Go
made by Lieutenant Cook, that still
the corn it is just and equitable to ta
him at the time, and he alleges that he
Harker included, on an average the su
of fifty-six (56) pounds, and that the
six (56) pounds to the bushel which co
the sum of ten thousand six hundred se
sum is included the freight to Harke
nothing for his time or for reasonable pr

34 cars, 24,000 lbs. each..... RECAP
Paid for at $1.25 per bushel of 56 lbs....

Bal. not p'd for in lbs.....

Being, in bushels of 32 lbs. each, 12,87
According to Lieut. Cook's arrangeme
is due to Mitchell for corn not p'd for.

In bushels of 56 lbs. each, this 415.334
bushels, which at cost ...

more than $1.25 per bushel of 56 pounds, that he should be paid the excess, including a reasonable amount for profits and expenses.

And Mitchell alleges that said corn, including freight, cost him $1.44 per bushel of 56 pounds, and that a reasonable amount added thereto for expenses and reasonable profits, would make the corn worth, at the time, $1.52¼ per bushel of 56 pounds; and that the number of bushels of 56 pounds each included in the 400,666 pounds, was 7,153, which, at $1.52¼ per bushel, would amount to the sum of $10,890.44, which is the amount Mitchell should have been paid, but he was only paid at the rate of $1.25 per bushel, which amounted to the sum of $8,941.25, leaving a balance due to Mitchell on said 400,666 pounds, of the sum of $1,956.19; that said corn was worth the said sum of $1.52¼ and had cost Mitchell $1.44 per bushel, exclusive of reasonable profits and his expense. (See affidavits of Mitchell, marked Exhibit D.)

Recapitulation of am't paid for by Capt. Thomas.

400,666 lb*b*. =7,154¾ bush. of 56 lbs., which was paid for at $1.25 per bush., $8,941.25. The same number of bushels at $1.52¼ per bush. w'ld have amounted to $10,891.96, which is the amount Mitchell should have rec'd under his arrang't with Lieut. Cook; or on the calculation of the actual costs of the corn, with an addition of a small amt. for expenses and profits. Deducting, then, the sum of $8,941.25, the sum actually paid, from $10,890.44, the sum actually due, and it leaves a balance due Mitchell, on the 400,666 lbs. partially paid for by Capt. Thomas, of $1,959.19, which sum Mitchell claims.

Third. And for a third and further claim, Mitchell says that in 1875 he had a wood contract with the Government to furnish 650 cords of wood, at Ft. Wallace, Kansas, at $17.00 per cord, and that he furnished the wood under the contract and something over, but that when the Government paid him for said wood it deducted from the amount coming to him, for the wood furnished, the sum of $1,324.57, which sum he has never received; that, as he understands it, the deduction was made on the theory that when Capt. Thomas paid Mitchell for 400,666 lbs., he paid him for 48,657 lbs. more than was comming to him, and in settling the wood contract the Gov. deducted the sum of $1,087$\frac{89}{100}$, from the am't due for the wood, that being the am't that 48,657 lbs. of corn would amt. to, at $1.25 per bush. of 56 lbs.; and the Gov. deducted the further sum of $237.07 from the am't due on said wood contract, claiming that that sum had been overpaid to Mitchell, as follows: The pencil memorandum on Capt. Inman's purchase book indicated that 48,657 lbs. of the corn had been taken to fill the oat contract, and paid for at the rate of 87 cents per bushel of 32 lbs., or $1.52¼ per bush. of 56 lbs., being 27¼ cents per bush. more than was allowed for the corn by Capt. Thomas. This 27¼ cents excess so paid was deducted from the wood contract, as ab'v' stated, and amounted to the sum of $237.07. Thus it will be seen that the Gov. deducted from the amount due on the wood contract, as above stated, the sum in the aggregate of $1,324.57. Mitchell, therefore, claims that sum as the balance due him on the said wood contract He further states that he is confident that the Gov. was mistaken in relation to his having rec'd any pay for the 48,657, and in the fact of any of the corn being taken to fill the oat contract; that he filled the oat contract with oats, and had a large bal. on hand not yet paid for, as hereinafter stated.

Fourth. And for a fourth and further claim against the Government, Mitchell says that during the years 1867, 1868, and 1869, he filled various and sundry contracts with Government for furnishing oats and corn at Fort Harker, Kansas, and that he furnished a large amount both of oats and corn that he has never received any pay for. That during all of said time Capt. Henry Inman was chief quartermaster of the department, with headquarters at Fort Harker, and that said Inman at all times when he was at said Fort Harker, kept a private book in which he caused to be entered all purchases made by him in behalf of the Government, and also of all payments made in such purchases. That said book was so kept until up to and including a portion of the month of October, 1868, at which time said Inman was called into the field on an Indian campaign, where he remained until in April, 1869. That during his absence said purchase book was not kept, but the same was attempted to be be made up after his return from memoranda in the quartermaster's office, but that the business of the office had been conducted in such a manner during his absence that it was impossible to tell whether said book was rightly made up or not for the time of his absence. That the entries appearing in said book before the date he was called into the field were correctly made, and at the time of the purchase, and such purchases as were paid for were so marked in said book.

And Mitchell says that it appears by said book and by and from the return of said Inman made to the Department at Washington during the time, that at the time he, said Inman, went into the field there was a large amount due to said Mitchell from the Government for oats and corn that had never been paid for and the same has not been paid for yet.

And Mitchell further alleges that during the absence of said Inman in the field, he

furnished to the Government, in addition to the corn specified in the first count in this claim, a lage amount of oats for which he never has received any pay. That the business of the department at Fort Harker was conducted in such a manner as for it to be impossible to tell what had been received, and from whom, but Mitchell says that the returns of said Inman made when he left, and before he left Fort Harker in the spring of 1869, show that there was a large amount of surplus forage on hand at said Harker that had never been paid for, and said Inman could not tell to whom it belonged nor to whom the Government was indebted for it. And Mitchell says that the same or a large portion of the same had been furnished by him, and that on account of the negligent manner in which the business had been conducted, he had not received credit for it, but that an inspection of said purchase book and of he returns of said Inman on file in the Department will show that this large surplus or a great portion thereof belonged to him. In this connection we call attention to the entry in Capt. Inman's purchase book under date of Sept. 30, 1868, of 168,000 lbs. of corn, and to the others entries of corn and oats for Sept. and Oct., 1868. This large am'nt does not appear to have ever been paid for.

Recapitulation of claim.

1st. Under the first count in the above petition and statement Mitchell claims payment for 415,334 lbs. of corn furnished in lieu of oats, under contract of Nov. 9th, 1868, at 87 cents per bushel of 32 lbs., or at $1.52½ per bushel of 56 lbs., which amounts to $11,204.90.

2nd. Under the second count he claims payment for balance due on the 400,666, partly paid for by Capt. Thomas, having been paid $1.25 per bushel of 56 lbs., when he should have been paid $1.52½. The 400,666 lbs. amounted to 7,154 bushels of 56 lbs. He received $1.25 per bushel, being $8,941.25. He should have received $1.52½ per bushel of 56 lbs., which would have been $10,890.44. The difference between these two sums is still due him, being the sum of $1,959.19.

3rd. Under the third count he claims the amount still due him on his wood contract with'eld for the reasons, as he understands it, stated in said count, being in the aggregate the sum of $1,324.57.

4th. Under the fourth count he claims such sum as a thorough examination of the accounts, vouchers, books, and papers of Cap. Inman, and the files in Q'm. Off. at Ft. Smith, and in Washington City in the 3rd Auditor's and other proper offices, may show to be due to him on corn and oats not yet paid for.

5th. He further claims interest on all sums found to be due to him from the date the same should have been paid, at such rate as shall be equitable and just.

And Mitchell prays for a thorough and impartial investigation of all the matters referred to in the above petition, as he feels confident that great injustice has been done him in the premises; and he also feels that in a fair settlement with the Government there will be found due to him a large sum of money. He is ready and willing to assist in any and all investigations, and will to his utmost endeavor to furnish any and all testimony that may be called for. He refers to exhibits hereto attached, and especially to the affidavits of the jurors, which explains itself.

Hoping that the matter will receive prompt and careful attention, he now submits this his claim and statement.

D. H. MITCHELL.

JO. W. TAYLOR, *Att'y.*

EXHIBIT D.

STATE OF KANSAS, *Learenworth County, ss:*

David H. Mitchell, being first duly sworn, deposes and says that he is the claimant named in the above and foregoing statement and claim against the Government of the U. S., and that the matters and things in statement contained are true, as far as they are stated of his own knowledge, and that that portion thereof stated on information and belief he believes to be true. Affiant further says that he has shipped large amounts of freight of various kinds on R. R., and that it is the custom to put in the cars 2,000 to 4,000 lbs. more freight than the am'nt allowed by the R. R. co.; that he personally superintended shipping a large am't of the corn and oats in the above claim referred to, and that he believes that the cars he loaded contained on an average 24,000 lbs. and upwards. Affiant further says that he shipped and had shipped, as he believes, 34 car-loads of corn on said contract of Nov. 9, '68, and that the same was shipped as stated in the above statement. Affiant further says that the corn cost him $1.44 per bushel, as above stated, without allowing him anything for his time and personal responsibility and trouble, and that the arrangement with

Lieut. Cook was that he was to receive for the corn $1.52 per bushel of 56 lbs., and that the corn was worth that sum when the same was delivered at Ft. Harker. Affiant further says that Capt. Thomas only paid him at the rate of $1.25 per bushel for the 400,666 lbs. he paid for, and his right to receive the balance, to wit, the difference bet. $1.25 and $1.52 was left open, and he claims said balance. Affiant further says that this claim is honestly made, believing that it is just, and that Gov. is indebted to him as above stated; that the whole matter was pretty well ventilated in the trial of the case of the U. S. Gov. *vs.* David H. Mitchell, in the U. S. dist't c't at Topeka, and the affidavits of the jurors, herewith submitted, recites the facts in relation thereto. Affiant further says that he has been financially ruined by these contracts and the delay in getting his money on the same, and that he now submits this claim, hoping that the Gov'm't will do him simple justice.

D. H. MITCHELL.

Subscribed in my presence and sworn to before me this 30th day of Oct., 1877.
[SEAL.] J. M. NIEHAUS,
Notary Public.

B.—*Statement showing No. and initial of cars, etc., in service of grain shipments from various stations on Kans. Pacific Railway to Fort Harker, ac. of D. H. Mitchell*, 1868–1869.

Date.	M'n'l'st.	No. of car.	Initial of car.	From—	Consigner.	✗—	Consignee.	Description. Articles.	Description. Weight.
1868.									*Lbs.*
Nov. 21	22	1434	K. P.	Perry	Griffith & D		Lieut. Cook	145 sacks oats	18,000
Dec. 23	36	1441	"	"	R. S. G	D. H. Mitchell	Q. M	156 do.	18,000
" 31	44	1207	"	"	do	do	Lieut. Cook	150 do.	18,000
" 17	2	1391	"	Fairmount	D. H. Mitchell		A. Q. M	119 } 20 } sacks corn	18,000
" 18	3	1200	"	"	do		do	165 do.	18,000
" 24	5	1376	"	"	do		do	165 do.	18,000
" 23	2	1360	"	Williamstown	do		Capt. Kendall	165 s'ks shell'd do.	18,000
" 29	4	1348	"	"	do		Q. M	165 " " "	18,000
1869.									
Jan'y 19	56	1443	"	Grant's	do		do	170 " " "	18,000
" "	57	1254	"	"	do		do	170 " " "	18,000
" 11	3	1354	"	Williamstown	do		do	160 " " "	18,000
" 11	4	1383	"	"	do		do	160 " " "	18,000
" 11	5	1388	"	"	do		do	160 " " "	18,000
" 15	6	1310	"	"	do		do	160 " " "	18,000
" "	7	1320	"	"	do		do	160 " " "	18,000
" 20	9	1420	"	"	do		do	160 " " "	18,000
" 23	11	1432	"	"	do		do	160 " " "	18,000
" 23	12	1315	"	"	do		do	160 " " "	18,000
" 5	3	1363	"	Fairmount	do		do	147 " oats	18,000
" 11	6	1325	"	"	do		do	— " " & 30 sacks corn	18,000
" 12	7	1232	"	"	do		do	165 " "	18,000
" 13	8	1245	"	"	do		do	165 " "	18,000
" 24	10	1374	"	"	do		do	165 " "	18,000
" 22	11	1436	"	"	do		do	165 " "	18,000
" 25	12	1361	"	"	do		do	165 " "	18,000
" 18	9	1375	"	"	do		do	165 " "	18,000
Febr'y 2	2	1429	"	Williamstown	do		do	160 " "	18,000
" 6	3	1343	"	"	do		do	160 " "	18,000
" 10	4	1201	"	"	do		do	160 " "	18,000
" 1	1	1354	"	Fairmount	do		do	165 " "	18,000
" 2	2	1243	"	"	do		do	165	18,000

Av., 719, '76. L. 2164, '76.

Personally appeared S. T. Smith, who being duly sworn, says that he is the auditor of the Kansas Pacific Railway C., and that the foregoing statement is true and correct to the best of knowledge and belief.

S. T. SMITH.

Subscribed and sworn to before me this 1st day of Dec., 1876.

[SEAL.] JOHN W. GRIFFITH,
Notary Public.

Cont. dated May 1st, 1874; expires May 1, 1878.

W. D., Q. M. G. OFFICE,
Washington, April 28, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) Exhibit B. No. 2. Of cars shipt by D. H. Mitchell. 1039, War Dept., 2, 1877. 4-206, Qr. Mr. Gen'l Office. Received Feb. 10, 1877, with 3-185, Q. M. G. O., 1875; 694-1875.

EXHIBIT F.

STATE OF KANSAS, *Leavenworth County, ss:*

Fred. Zimmerman, being duly sworn, deposes and says that he was employed in the quartermaster department at Fort Harker, Kansas, from July, 1867, until the middle of November, 1868, and from the middle of December, 1868, until some time in February, 1869, and assisted in weighing and receiving the grain at said post during that time; was acting as forage master from October 10, 1868, to the middle of November of 1868, and from the middle of December, 1868, until some time in February, 1869, gave his personal attention to the weighing and receiving grain at the forage yard at said post; that the cars containing grain averaged 2,400 lbs. in weight per car.

FRED. ZIMMERMAN.

Sworn to before me and subscribed in my presence this 5th day of December, A. D. 1876.

[SEAL.] H. R. PENDERY,
Notary Public.

W. D., Q. M. G. OFFICE,
Washington, April 28, 1877.

A true copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) *In re.* D. H. Mitchell. N. 1039. War Dep't, 4, 1877. Affidavit of Fred. Zimmerman. 2-206. Q'r M'r Gen'l's Office. Received Feb. 10th, 1877, with 6-185. Q. M. G. O., 1877, & 694-1875,

STATE OF KANSAS, *Ellsworth Co., ss:*

Henry Inman, being first duly sworn, deposes and says that during the fall of 1868 and winter of 1868 and 1869 and spring of 1869 he was an officer in the U. S. Army, of the rank of brev't lieut. col. and capt. and assistant Q. M., and chief Q. M. of the district of the Upper Arkansaw, with headquarters at Fort Harker, Kansas; that during the fall of 1868 he was called into the field to accompany General Sheridan on the Indian expedition of 1868 and 1869, and remained absent from Ft. Harker during nearly all the time from October, 1868, until April, 1869; that he knows one David H. Mitchell who was then, and still is a resident of Leavenworth City, Kansas, and that during the month of November, 1868, and on the

9th day of the month, said Mitchell entered into a contract to furnish to the Government at Fort Harker sixteen thousand bushels of oats, at 87 cents per bushell. A copy of which said contract is hereto attached, marked Exhibit A, and made a part hereof. That in pursuance of said contract, said Mitchell furnished a large quantity of oats, but, as affiant is informed and believes, owing to the state of the roads, and his inability to get his oats to the R. R. track as fast as the exigencies of the Government demanded, an arrangement was entered into between him and Lieut. L. W. Cook, who was, during affiant's absence, acting in his stead, to the effect that said Mitchell was to fill his said oat contract with corn, and was to receive pay for the same at the same rate per pound as he was getting for oats under his said contract; that in pursuance of this arrangement, said Mitchell furnished corn, as is shown by my purchase-book, as follows: Dec. 31st, 1868, 41,870 lbs.; Jan'y 31, 1869, 283,221* lbs.; Feb. 27th, 1869, 20,918 lbs., or a total of 400,666 lbs. of corn; that a forage receipt was given to said Mitchell for said amount by Gren. Thompson, who was at that time forage-master at said post. That afterwards affiant made out a voucher for the amount of corn delivered by said Mitchell during said time, under said contract, and in said voucher deducted 48,657 lbs., leaving a balance of 352,009 lbs., which amount he inserted in the voucher, a copy of which is hereto attached, marked D. That the reason he deducted the 48,657 lbs. was, because Mitchell was paid for that amount of the corn furnished as oats—that is, 48,657 lbs. was taken of the corn furnished and considered oats—leaving a balance of 352,009 of corn. Mitchell was paid for this last amount by Capt. Thomas, at Washington, D. C., on Jan'y 12, 1870, as affiant is informed. Affiant further says that this corn was furnished during affiant's absence, and he has no means of knowing the exact amount of corn furnished by said Mitchell; that the figures above were taken from his "purchase-book," a private book kept by him, in which, when he was present, attending to the duties of his office in person, he caused to be entered a memoranda of all purchases made by him, on behalf of the Government, and of all property furnished to the Government from all sources of purchase; but that during his absence in the field, as above stated, said book was not kept at all, but that after his return, in the spring of 1869, and about the 1st of April, 1869, he commenced to attempt to straighten his accounts, and caused said purchase-book to be made up, and the same was made up at that time, and after all the corn and oats had been furnished by Mitchell, from memorandums and reports found in affiant's office, and filed there by the forage-master, as affiant supposed; but affiant says that his accounts were kept so negligently, and such irregularities occurred during his absence, as to make it impossible for him ever to get them straightened up in any satisfactory manner, and that he can not to-day tell anywhere near how they do stand; that it is quite possible said Mitchell may have furnished large amounts of corn that do not appear in said purchase-book; the memoranda and reports of the receipt of which, with weight, may have been lost or misplaced, and affiant does not think said purchase-book is entitled to credit as being proof that said Mitchell furnished no more corn than the amount therein shown. Affiant further says that he was present at the trial of the case of the U. S. vs. said David H. Mitchell, at Topeka, in April last, and heard all of the evidence in the case, and that after hearing the evidence and ascertaining the number of cars shipped by said Mitchell to said Harker, during said time, and having thought the matter carefully over since, he is of the opinion that said Mitchell did furnish a large amount more corn than the 400,666 above named; and affiant is confirmed in this belief, and his belief almost made certain by the following fact, to wit: That Abstract "A" of one of his monthly reports for the spring of 1869, shows a large amount of corn fed out by the Government, and received from some person unknown to him; affiant can not state the exact amount, but it was a very large amount, and the abstract will be found in his reports for, probably, the month of April, 1869, in the 3rd Auditor's Office. At the time, affiant could not tell to whom it belonged, and has now good reason to believe that it may belong to said Mitchell. The amount, as affiant remembers it, was from six to nine thousand dollars' worth; but affiant can not state nearer. Affiant further says that during the whole of said time, the exigencies of the Government demanded a large amount of forage, and that all of the corn and oats furnished by said Mitchell was fed to Gov't animals, as shown by affiant's paper. Affiant further says that after said Mitchell had furnished the corn, Col. Easton refused to pay for it as oats, and compelled said Mitchell to fill his contract with oats, which he did, except 48,657 lbs., which said amount was made up of corn, as above stated. Affiant further says that Exhibit "B," hereto attached, is an abstract from affiant's said purchase-book, and shows all of the corn and oats delivered by said Mitchell, at said Harker, at the various times therein stated, as the same appears on said book, and that the forage receipt for 400,666 lbs., and the voucher for 352,009

* This delivery was, as shown by purchase-book 331,878, out of which is deducted, as hereinafter stated, 48,657.

lbs., each comprise the same deliveries, and were each made for the said book, as above stated. And affiant has never given said Mitchell any other or further voucher for corn delivered during said time.

HENRY INMAN.

Subscribed in my presence, and sworn to before me, this 7th day of July, A. D. 1876.
[SEAL.] IRA E. LLOYD,
Notary Public, Ellsworth County, State of Kansas.

W. D., Q'R M'R GEN'S OFFICE,
Washington, April 28, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

EXHIBIT B.

Purchases on account of the United States by Brevet Major Inman, A. Q. M., U. S. A., at Fort Leavenworth, Kansas.

Date of purchase.	From whom purchased.	Articles.	Price.		Amount.		Remarks.
			Dolls.	Cts.	Dolls.	Cts.	
1867.							
Sept. 30th	D. H. Mitchell	7000 bushels corn	1	67	10521	00	Contract dated Sept. 17th, '67, for 15000 bus.; 10% retained.
Oct. 24 "	D. H. Mitchell	3000 bushels corn	1	67	4509	00	Contract incomplete; 10% retained.
" 31 "	D. H. Mitchell	133738 lbs. corn	1	67	3589	43	Contract.
Nov. 6 "	D. H. Mitchell	20295 " "	1	67	605	22	Contract incomplete.
" 7 "	"	36880 " "	1	67	1099	81	" "
" 19 "	D. H. Mitchell	14575 " "	1	67	434	64	"
" 21 "	D. H. Mitchell	20175 " "	1	67	601	64	"
" 23 "	D. H. Mitchell	8023 " "	1	67	239	25	Do.
" 24 "	"	20250 " "	1	67	603	88	Do.
" 27 "	D. H. Mitchell	20235 " "	1	67	606	41	Contract.
" 29 "	"	5720 " "	1	67	170	57	Completing contract for 15000 bushels.
Dec. 18 "	D. H. Mitchell	22570 " "	1	59	640	82	Contract for 15000 bushels.
	D. H. Mitchell	38530 " "	1	59	1093	97	Contract.
	D. H. Mitchell	22315 " "	Bus. 1	59	633	58	"
	D. H. Mitchell	43300 " "	Bus. 1	59	1229	41	"
	D. H. Mitchell	203970 " "	1	59	5791	29	"
	D. H. Mitchell	101140 " "	1	59	2871	65	"
	D. H. Mitchell	10000 " "	1	59	283	93	"
	D. H. Mitchell	1716 " "	1	59	48	72	"
	"	28970 " oats					
1868.							
Jan'y 16 "	D. H. Mitchell	38570 " corn	1	59	1095	11	Contract.
" 18 "	D. H. Mitchell	42190 " "	1	59	1197	89	"
" 21 "	D. H. Mitchell	110882 " "	1	59	3148	25	"
Feb'y 3 "	D. H. Mitchell	8172 " "	Bus. 1	59	222	02	"
" 5 "	" "	6512 " "	" 1	59	184	90	"
March 27 "	D. H. Mitchell	28970 " " per bus	1	59	822	54	On contract.
Sept. 2 "	D. H. Mitchell	54766 pounds corn, 977. 54	1	28	1251	75	
" 25 "	D. H. Mitchell	21240 lbs. oats		65	431	43	On contract Aug. 17.
" 30 "	D. H. Mitchell	20480 " "		65	416	00	" " " "
" " "	do	168000 " corn, 3000 bus	1	28	3840	00	" "
November 1	D. H. Mitchell	396 $\frac{1}{2}$ bush. oats		65	257	57	" " Aug. 17, f'r 1700 bu. new corn (cont. complete).

November 25	D. H. Mitchell	19580 lbs. oats, 611$\frac{8}{32}$ bush.		87	532	38	On contract Nov. 9, 16000 bush.
December 31	D. H. Mitchell	36100 lbs. " 1128$\frac{4}{32}$ "		87	981	47	" " Nov. 9, f'r 16000 bush.
" 30	D. H. Mitchell	41870 " corn, 747$\frac{8}{56}$ "					
1869.							
January 31	D. H. Mitchell	55654 " oats, 1739$\frac{6}{32}$ "		87	1513	09	On contract Nov. 9, f'r 16000 bush.
" 30	" " "	331878 " corn, "					Less 48657 lbs. used to fill oat contract of Nov. 9.
Feb'y 27	D. H. Mitchell	26918 " corn, 480$\frac{8}{56}$ "					
March 31	D. H. Mitchell	289690 " oats, 9052$\frac{8}{32}$ "		87	7875	95	On contract, Nov. 9, 1868, f'r 16000 bush.
	D. H. Mitchell	28970 " corn, 517$\frac{4}{56}$ "	1	59	822	36	

W. D., Q. M. G. OFFICE,
Washington, April 28, 1877.

HENRY C. HODGES,
Dep. Q. M. Genl, U. S. A.

True copy.

EXHIBIT D.—No. 12.

The United States to D. H. Mitchell, Dr.

Date of purchase.		Dolls.	Cts.
1868.			
Dec'r 30th.	For 747$\frac{3}{8}$ bushels corn (41879 lbs.)		
1869.			
Jan'y 30 "	" 5057$\frac{3}{8}$ " " " (283221 lbs.)		
Febr'y 27	" 480$\frac{3}{8}$ " " " (26918)		
	Purchased on account of Nov. 9, 1868		

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the months of Dec'r, 1868, and Jan'y and Feb'y, 1869.

HENRY INMAN,
Bvt. Lieut. Col. and Ass't Quartermaster.

Received at ——, the —— of ——, 186–, —— ——, quartermaster United States Army, the sum of —— dollars and —— cents, in full of the above account.

D. H. MITCHELL.

(Signed in duplicate:)

W. D., Q. M. G. OFFICE,
Washington, April 28th, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) No. 3. Mr. D. H. Mitchell. Voucher 1039. War Dep't. 1877. With 5–185. Q. M. G. O., 1877. 694. 1875.

THE STATE OF KANSAS, *Leavenworth County, ss:*

We, the undersigned, do hereby make oath, and do under oath say, that we were jurors in the trial of the case of the United States against David H. Mitchell, tried before the district court of the United States for the district of Kansas, for the April term, A. D. 1876; that it was shown in that case that the said David H. Mitchell had delivered under contract and orders from the proper military authority at Fort Harker, during the winter of 1868–'9, a large quantity of corn, for which there did not appear any evidence of payment or satisfaction, to wit: There was evidence tending to show that 792,000 lbs. of corn were delivered by Mr. Mitchell during said months of November and December, 1868, and January and February, 1869, and there was no evidence produced on the trial of the payment of any amount over 400,666 lbs. of corn; and the undersigned further say that the verdict in the case was based on the fact that the claim (for presenting and swearing to which Mitchell was indicted and tried) set forth the exact items for which he was previously paid, and which were included in the payment for the 400,666 lbs. voucher or claim, and the verdict in this case was based on this fact, and not on any evidence that the Government had paid him for all the corn which the evidence showed that he had delivered to the United States at Fort Harker.

The undersigned further say that there was evidence admitted by the Government tending to prove that Mitchell delivered the entire amount hereinbefore specified, to wit, 792,000 lbs., the evidence showing payment for 400,666 lbs., and if the difference between these two amounts has not been paid for, we believe, under the evidence, that Mitchell has yet a just claim for that amount. We desire to be understood plainly in our statements, that the result of the trial came from the fact that the claim was for vouchers already paid, and not from the fact that the Government was not indebted to him, for we believe, as before stated, that the evidence shows the Government indebted to Mitchell for the difference between 792,000 lbs. and 400,666 lbs., which would be 391,334 lbs., less 48,657, which was shown to have been paid in the oats contract and voucher. This would leave the net difference 342,677 lbs., and for this amount, to wit, 342,677 lbs. of corn, Mitchell has, according to the evidence, a valid claim against the Government. There was no evidence introduced on the trial tending to show any payment to Mitchell for this amount; whether it has been paid or not the undersigned do not pretend to know or say, but if not paid, Mitchell, according to to the evidence, is entitled to payment therefor.

Again we desire to say, to avoid misunderstanding, that the jury did not decide by their verdict that Mitchell had no just claim against the Government, but only that he was not entitled to payment for the items specified in his voucher, and for the presentation of which he had doubtless violated the law.

C. REASONER, *Foreman Jury.*
JOHN H. STRINGFELLOW.

Subscribed in my presence and sworn to before me by C. Reasoner and John H. Stringfellow, this 3d day of May, A. D. 1876.
[SEAL.]

J. L. BERRY,
Notary Public.
CHESTER THOMAS.
DENNIS JONES.

Subscribed in my presence and sworn to before me by Dennis Jones, this 12th day of May, A. D. 1876.
[SEAL.]

HAMILTON ELLIS,
Notary Public.

STATE OF KANSAS, *Wyandotte County, ss:*

Personally appeared before me, a notary public within and for said county and State, Phillip Knoblock, whose name is subscribed to the foregoing affidavit, and who, being first duly sworn according to law, deposes and says that the affidavit thereto subscribed is true according to his best knowledge and belief.

PHILIP KNOBLOCK.

Subscribed and sworn to before me, this 26th day of May, A. D. 1876.
[SEAL.]

W. J. BUCHUN,
Notary Public.

Subscribed in my presence and sworn to before me by J. A. Fligor, this 26th day of May, A. D. 1876.
[SEAL.]

A. J. CAMPBELL,
Justice of the Peace of Delaware Township,
Wyandotte County, State of Kansas.
J. A. FLIGOR.

Subscribed in my presence and sworn to before me by M. H. Brown, this 27th day of May, A. D. 1876.
[SEAL.]

W. M. RICE,
Notary Public.
F. W. WILLARD.

Subscribed in my presence and sworn to before me by F. W. Willard, this 29th day of May, 1876.
[SEAL.]

HAMILTON ELLIS,
Notary Public.

Subscribed in my presence and sworn to before me by A. D. Stone, this 6th day of June, A. D. 1876.

CHARLES SHEDD,
Notary Public.

W. D., Q. M. G. OFFICE,
Washington, April 28th, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) No. 1. 1039. War Dep't, 1 1877. Q'r M'r Gen'l's Office. Received Feb. 10th, 1877. 5-206. With 2-185. Q. M. G. O., 1877, & 694-1875. Statement of the jury.

STATE OF KANSAS, *Leavenworth County, ss:*

We, the undersigned, do make oath and say that we were jurors in the trial of the case of the United States against David H. Mitchell, tried before the district court of the United States for the district of Kansas, for the April term, A. D. 1876;

that since the said trial we have read the papers duly certified to by Lot M. Morrill, Secretary of the Treasury of the United States, dated the 27th day of July, A. D. 1876, with the seal attached, and say, had the same been produced and read on the trial of said cause, we would have given a different verdict, and we would have found the defendant "not guilty."

We give this statement freely and cheerfully, with a view that Mr. Mitchell may obtain executive clemency from the President of United States, which we believe he is justly entitled to.

JOHN H. STRINGFELLOW, *M. D.*

Subscribed and sworn to before me, this 9th day of December, A. D. 1876.
[SEAL.] PETER S. NOBLE,
Notary Public.

STATE OF KANSAS, *Shawnee County, ss:*

W. G. Souther, being duly sworn, says that he was one of the jurors in the case of the United States *vs.* D. H. Mitchell at the April term of the U. S. district court, A. D. 1876, and that the question of account between said Mitchell and the United States was not considered by the jury; that he has since examined certain vouchers and statements furnished to said Mitchell from the Auditor's Office at Washington, and says that such vouchers if presented to the jury at the time of trial would have caused in affiant's mind a different view of the case, and have led him to give a different verdict.

G. W. SOUTHER.

Sworn to this 11th day of December, 1876, before me.
[SEAL.] ELIAS SHULL,
Notary Public, Shawnee Co., Kans.

I concur in the above statement, having also been a juror in the case, after reading he same.
[SEAL.] CHESTER THOMAS.

ELIAS SHULL,
Notary Public, Shawnee Co., Kans.

The original of the above is on file in the office of the Att'y Gen'l among the papers of the ap'lication of Mitchell for his pardon.

W. D., Q. M. G. OFFICE,
Washington, April 28th, 1877.

True copy.

HENRY C. HODGES,
Dep. Q. M. Gen'l, U. S. A.

(Indorsed:) War Dep't, 5-1877. Second affidavit of jury. Q'rm'r Gen's Office. Received Feb. 10th, 1877. With 7-185. Q. M. G. O., 1877 & 694-1875.

(Indorsed:) D, 4831. C. Q'rm'r Dep't Mo. Received Nov. 7, 1877, October 30, 1877. 6-1629. Q'rm'r Gen's Office. Received Dec. 4, 1877. With 9-621. Q. M. G. O., 1878. D. H. Mitchell, of Leavenworth, Kan. 2179. Petition and statement relative to amount due him for corn furnished the Q'rm'r Dep't at Fort Harker, K's, during the years of 1868-'69. 11940. Filed May 15, 1878. J. R.

Purchases on account of the United States by Brevet Major Henry Inman, A. Q. M., U. S. A., at

Page of Pur. Book.	Date of purchase.	From whom purchased.	Articles.	Price.		Amount.		Remarks.
				Dolls.	Cts.	Dolls.	Cts.	
	1867.							
1	Sept. 30th	D. H. Mitchell.....D	7,000 bushels corn	1	67	10,521	00	Contract dated Sept. 17th, '67, for 15,000 bus., 10 % retained. Vou.
1	Oct. 24th	D. H. Mitchell	3,000 bushels corn	1	67	4,509	00	Contract incomplete, 10 % retained. Vou.
1	Oct. 31st	D. H. Mitchell	133,738 lb. corn	1	67	3,589	43	Contract, vou.
2	Nov. 6th	D. H. Mitchell	20,295 lbs. corn	1	67	605	22	Contract incomplete. D. vou.
2	" 7th	"	36,880 " "	1	67	1,099	81	" " D. vou.
2	" 19	D. H. Mitchell	14,575 lbs. corn	1	67	434	64	Contract, D. vou.
2	" 21st	D. H. Mitchell	20,175 lbs. corn	1	67	601	64	Contract, D. vou.
2	" 23	D. H. Mitchell	8,023 lbs. corn	1	67	239	25	do. D. vou.
2	" 24	do	20,250 lbs. corn	1	67	603	88	do. D. vou.
3	Nov. 27th	D. H. Mitchell	20,335 lbs. corn	1	67	606	41	Contract, D. vou.
3	" 29	"	5,720 " "	1	67	170	57	Completing contract for 15,000 bushels, D. vou.
4	Dec. 18	D. H. Mitchell	22,570 lbs. corn	1	59	640	82	Contract for 15,000 bushels, vou.
4	" 19	D. H. Mitchell	38,530 lbs. corn	1	59	1,093	97	Contract, vou.
4	" 20	D. H. Mitchell	22,315 " " bus	1	59	633	58	" vou.
4	" 21	D. H. Mitchell	43,300 lbs. corn, bus	1	59	1,229	41	Contract, vou.
4	" 26	D. H. Mitchell	203,970 " "	1	59	5,791	29	" 100,000 in error. Vou.
5	" 27	D. H. Mitchell	101,140 lbs. corn	1	59	2,871	65	Contract, vou
5	" 28	D. H. Mitchell	10,000 " "	1	59	283	93	" (oats). Vou.
5	" 31	D. H. Mitchell	1,716 lbs. corn	1	59	48	72	Contract.
5	" "	"	28,970 lbs. oats					In excess of corn contract.
	1868.							
6	Jan'y 16	D. H. Mitchell	38,570 lbs. corn	1	59	1,095	11	Contract, D. vou.
6	" 18	D. H. Mitchell	42,190 lbs. corn	1	59	1,197	89	Contract, A. vou.
6	" 21	D. H. Mitchell	110,882 lbs. corn	1	59	3,148	25	Contract, D. vou.
7	" 30	D. H. Mitchell	21,220 lbs. corn	1	59	602	49	Contracts, D. vou,
7	" 31	"	129,180 " "	1	59	3,667	78	" D. vou.
8	Febr'y 2nd	D. H. Mitchell	8,172 " corn, bus	1	59	232	02	Contract, D. vou.
8	" 5th	"	6,512 " " "	1	59	184	90	" D. vou.
8	" 8	D. H. Mitchell	10,763 " corn, bus	1	59	305	59	Contract, D. vou.
9	March 27	D. H. Mitchell	28,970 " corn, per bus	1	59	822	54	On contracts, A. vou.
15	Sept. 2nd	D. H. Mitchell	54,766 pounds corn, 977.54	1	28	1,251	75	D.
15	" 25	D. H. Mitchell	21,240 lbs. oats		65	431	43	On contract, Aug. 17. Cert'd vou. No. 19, given. D.
15	" 30	D. H. Mitchell	20,480 " oats		65	416	00	" " Aug. 17. Cert'd vou. No. 19, given. D.
15	" "	do	168,000 " corn. 3,000 bush	1	28	3,840	00	" " D.
17	Nov. 1	D. H. Mitchell	396 2/3 bush. oats		65	257	57	On contract, Aug. 17, fr. 1,700 bush. Gen. Card, (contract complete), cert'd vou., No. 19, D.
17	" 25	D. H. Mitchell	19,580 lbs. oats, 611 33/56 bush		87	532	33	" " Nov. 9, 16,000 bush. Gen. Card. Cert'd vou. No. 17, given. D.

Purchases on account of the United States by Brevet Major Henry Inman, A. Q. M., U. S. A., at—Continued.

Page of Pur. Book.	Date of purchase.	From whom purchased.	Articles.	Price.		Amount.		Remarks.
				Dolls.	Cts.	Dolls.	Cts.	
18	Dec. 31	D. H. Mitchell	36,100 lbs. oats, 1,128 4/32 bush		87	981	47	On contract, Nov. 9, fr. 16,000 bush. Cert'd vou. No. 17, given. D.
18	" 30	D. H. Mitchell	41,870 " corn, 747 28/56 bu					Cert. vou. No. 44. D.
24		D. H. Mitchell	28,970 " " 517 14/56 bu	1	59	822	36	Cert'd vou. No. 54. D.
24		"	54,766 " " 977 14/56 "	1	59	1,554	96	" " " 54. D.
	1869.							
19	Jan'y 31	D. H. Mitchell	55,654 lbs. oats, 1,739 8/32 bush		87	1,513	09	On contract, Nov. 9, 1868, fr. 16,000 bush. Cert'd vou. No. 17, given. D.
19	" 30	D. H. Mitchell	331,878 lbs. corn, 5,926 22/56					Less 48,657 lbs. used to fill contract of Nov. 9. (to be deducted, if the % is paid or made up. Cert. vou. No. 44.
20	Feb'ry 27	D. H. Mitchell	26,918 " corn, 480 38/56					Cert. vou. No. 44.
21	March 31	D. H. Mitchell	289,690 lbs. oats, 9,052 22/32 bush		87	7,875	95	On contract, Nov. 9, 1868, fr. 16,000 bush. Cert'd vou. No. 17, given. D.
22	April 17	D. H. Mitchell	62,319 " oats, 1,947 15/32 bu		87	1,694	30	On contract, Nov. 9, fr 16,000 bu. Cert. vou. No. 43. D.
22		"	48,657 " corn as oats, 1,520 17/32		87	1,322	86	" " " " " " " Contract filled. Cert. vou. No. 43. D.

I hereby certified that I have personally made a comparison of the foregoing paper with the original record in the Book of Purchases of Captain Henry Inman, late A. Q. M., U. S. A., and find that this is a true and correct extract from the said Book of Purchases.

[SEAL.] W. M. PINKSTON,
Notary Public.

Certificate of Secretary of State to official character as notary on file in offices of Quartermaster-General and Third Auditor Treasury Department.

(Indorsed:) E. Q'rm'r Gen's Office, received Dec. 4, 1877. 2-1627 with 10-621. Q. M. G. O., 1878. Certified extract from "Purchase Book" of Capt. Henry Inman, late A. Q. M. 2179. War Dep't, 7, 1877. 11940. Filed May 15, 1878.

LEAVENWORTH CITY, *January* 19*th*, 1878.

The Hon. the SECRETARY OF WAR,
Washington, D. C.:

DEAR SIR: I submitted my claim for corn furnished at Ft. Harker, Kansas, to the Government in 1867-'68 and '69, to the Secretary of War February 5th, 1877, and requesting said Secretary to send the matters and things in said claim contained to Gen. R. Saxton, chief quartermaster, Fort Leavenworth, Kansas, to report and investigate the same. That in pursuance of said request the Secretary of War referred the matter to said Saxton. General Saxton afterwards made a report and statement and forwarded the same *the same* to the Quartermaster-General at Washington. Before forwarding said report and statement he refused to let me see and inspect the same, and has and still does so refuse to let me see the same, or furnish me a copy of the said report and statement, or inform me of the contents of the same. I do not know what the said report and statement contains, and would most respectfully ask that General R. Saxton be requested and instr'cted to furnish me a copy of the same, at his earliest convenience, so that if I should deem it necessary to offer any further evidence or proof in reference to the matter, that I might have an opportunity so to do.

Please find enclosed letter of Gen. R. Saxton, which will explain itself.

I am, sir, very respectfully, yours, &c.,

DAVID H. MITCHELL.

(Indorsed:) 835. War Department. Received Jan. 23, 1878. With 621. Q. M. G. O., 1878. 167. M. C. Qr Mr Gen's Office. Received Jan. 29, 1878. Leavenworth, Kans., January 16, 1878. David H. Mitchell requests that he may be furnished with a copy report made by Gen. R. Saxton, dep. qr'm'r gen'l, in the matter of his claim for grain alleged to have been delivered at Fort Harker, Kansas, in 1867, '68 & '69. One enc. Q. M. Gen'l. With 2179. W. D. 1877. 3619-1877. T-75—11940. Filed May 15, 1878.

LEAVENWORTH, KANSAS, *Feb'y* 18*th*, 1878.

The Hon. SEC. OF WAR,
Washington, D. C.:

I have the honor to invite attention to my letter of last month, asking for a copy of the report of the investigation of my case for grain furnished at Fort Harker during the years of 1868 & 1869, made by Gen'l Rufus Saxton, chief qr'm'r Dept. of Mo., in pursuance to your orders. The copies asked for have not been received, and I would respectfully request that the copies asked for may be furnished as soon as practicable, being very anxious to settle up this business.

I am, very respectfully,

DAVID H. MITCHELL.

(Indorsed:) 2005. War Department. Received Feb. 21, 1878. 361. Q'rm'r Gen's Office. Received Feb. 25, 1878. With 35-621. Q. M. G. O. 1878. Leavenworth, Ks., February 18, 1878. David H. Mitchell renews his request for copy of report of Genl. Rufus Saxton, chief quartermaster, Dept. of Mo., made in the matter of the investigation of his case rel. to furnishing grain at Fort Harker during years 1868-'69. Q. M. Gen'l. With 2179-1877. 11940. Filed May 15, 1878.

WAR DEPARTMENT,
Washington City, April, 1878.

Mr. DAVID H. MITCHELL,
Leavenworth City, Kansas:

SIR: In answer to your letter of January 19 and February 18, requesting a copy of Lieut. Col. Rufus Saxton's report upon your claim for forage alleged to have been delivered under contract at Fort Harker, Kansas, in the years 1867, 1868, and 1869, and not paid for, I am directed by the Secretary of War to inform you that he has approved a recommendation of the Quartermaster-General that no copy of the report in question should be furnished, but that the claim be rejected.

It is believed that the proper tribunal before which a claim for payment for forage alleged to have been delivered ten years ago should have been prosecuted was the Court of Claims, and that now Congress only can properly be asked to entertain it in the absence of any special legal provision and appropriation for auditing and settling such a claim by executive officers.

Very respectfully,

HENRY GOODFELLOW,
Judge-Advocate.

(Indorsed:) 11940. 5029. War Dep't, 1878. Filed May 15, 1878.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., March 29, 1878.

To the honorable the SECRETARY OF WAR:

SIR: I have the honor to return the papers in the claim of D. H. Mitchell for forage alleged by him to have been delivered under contracts at Ft. Harker, Kansas, in the years 1867, 1868, and 1869, and not, as alleged by him, paid for. He asks for copy of the report of an investigation of this case ordered by the Secretary of War, March 19th, 1877.

The report of Lt. Col. R. Saxton, dep. q'rm'r gen'l, U. S. A., chief quartermaster Department of the Missouri, who made the investigation, is herewith.

I recommend that he be not furnished with a copy of the report in question, and that the case be dismissed.

1st. He does not come with clean hands. It is on the record that he has been already once detected, indicted, tried, and convicted of fraud in attemping to obtain double payments upon account of this forage business at Fort Harker; and that he did obtain such double payments which were detected in the investigation of his attempted fraud above referred to, the amount of which was recovered to the United States by withholding it from money due him under a contract for wood at Ft. Wallace, Kas. (made before the discovery of this fraud), in accordance with opinion of the Second Comptroller, concurred in by the Secretary of War.

2nd. The records searched by Col. Saxton are in part those of Capt. Inman, who appears to have made affidavit in Mitchell's favor. General Court-Martial Order No. 19, W. D., A. G. O. of 1872, announcing the cashiering of Capt. Inman, will show that he is not a competent witness against the United States in these transactions, and that entries in his records, in which Col. Saxton finds errors, are not conclusive evidence against the United States.

3rd. The officers of the United States should scarce furnish to this convicted criminal, whose claims and charges against the United States have been judicially found to be unreliable, evidence on which to make new claims. One overpayment made to him was made on an order from a Secretary of War whom he succeeded in deceiving.

4th. There is no appropriation at the disposal of the War Department out of which the money which he claims could be paid, even were it proved that any was due.

5th. The proper tribunal before which to prosecute a claim for payment for forage alleged to have been delivered ten years ago is the Court of Claims, or Congress itself, in the absence of any special legal provision and appropriation for auditing and settling such a claim by executive officers.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General, Bv't Maj. Gen'l, U. S. A.

405. Q. M. G. O., 1877. 1627. Q. M. G. O. 1877; 167 Q. M. G. O. 1878; 361 Q. M. G. O. 1878; 493, 1042, 1076, and 1403. Q. M. G. O. 1876; and 185, and 206 Q. M. G. O. 1877, accompanying Cl. "Q" 134--1875. 31 enclosures.

(Indorsed:) Washington, March 29, 1878. 2179. War Dep't 9, 1877. 621. 8. The Quartermaster-General, U. S. Army. Returns papers in the claim of D. H. Mitchell,

with report of investigation of Col. Saxton C. Q. M. Dep't Mo. & other papers in the case. Recommends dismissal of case; also that Mitchell be not furnished copy of the report of Col. Saxton. T-75. File with 361 Q. M. G. O. 1878. 11940. Filed May 15, 1878.

WAR DEPARTMENT,
April 3d, 1878.

The recommendation of the Quartermaster-General is approved.

GEO. W. MCCRARY,
Secretary of War.

33 enc's.

WASHINGTON, D. C., *May 8th*, 1878.

Hon. GEO. W. MCCRARY,
Sec'y of War:

DEAR SIR: In the matter of my claim for payment for grain, furnished the Government at Fort Harker, Kansas, in 1868 and '9, I most respectfully request that you give the same most careful consideration, with the view of coming to a conclusion as to the amount now due me, and the prompt payment of the same. The grain furnished by me, under my contract with the Government, was under great difficulties, and at a time when prices were high; at the same time I was furnishing corn at Fort Harker I was engaged in furnishing large quantities of forage at Fort Hayes, Fort Riley, and Fort Leavenworth, and also furnishing beef for the Army, then on the plains, between Fort Harker and Denver. I was also engaged in furnishing supplies to the Osage Indians in southern Kansas, through the Commissary Dept. of the Army. I trusted in all cases to the good faith of the Government in the matter of receiving these supplies, and I feel that I ought not to suffer for any neglect of the officers at Fort Harker, where the grain was delivered for which I now ask payment. In the consideration of my case, I ask your attention to the following facts:

1st. All the corn furnished by me at Fort Harker was shipped to that post via the Kansas Pacific Railroad.

2d. It is shown by the bills of lading in the office of the auditor of the said railroad co. that thirty-three car-loads of corn were shipped by me to the quartermaster at Fort Harker during the fall and winter of 1868 and '9.

3d. It is further shown by the testimony of Mr. Griffith, of Lawrence, Kan., that one car-load of corn was shipped to Fort Harker by him intended for me, and put in on my contract.

4th. A Mr. Burnell, at Grantville, Kan., ship'ed in his own name intended for me, and put in on my contract, two or three car-loads of corn. Mr. Burnell left Kansas some years ago, and I have been unable to find him and obtain his testimony. I am confident that telegraphic or other correspondence between the quartermaster then at Fort Harker and Fort Leavenworth will show that this corn was sent to Fort Harker by Mr. Burnell. I paid Mr. Burnell for the corn. It was received by the quartermaster on my contract, and the books of the officers at Fort Harker ought to show this fact.

5th. When I entered into the contract of November 9th, 1868, I had on hand at Fort Harker about 168,000 lbs. of grain, which I had shipped to that post in excess of the amount necessary to fill a previous contract. This grain was put in on my contract of November 9th, 1868. I have already suffered on account of delay and misunderstanding of the facts in this case, and I earnestly ask that you order this claim to be paid, for such amount as may be found to be justly due me. The amount is shown in the papers already submitted. I am now in Washington for the purpose of prosecuting this claim, and would respectfully ask the opportunity of appearing before you, or any officer of your Department, with the view of stating personally all the facts in my possession and necessary to a full consideration of all the equities of the case. I earnestly urge that you favorably consider this case, as I can not well afford to pay the large expense of prosecuting the same in the Court of Claims, where at least one-fourth of the amount would be absorbed by attorneys' fees, and payment be made only after a long delay. I am, with great respect,

Your most obedient servant,

D. H. MITCHELL.

WASHINGTON, D. C.,
414 *6th street, Feb'y* 2, '77.

To the honorable the SECT'Y OF WAR, *City:*

SIR: I have the honor to state that during the years 1868 and 1869 I delivered to the Quartermaster's Department, U. S. Army, at Fort Harker, Ks. (during the time Capt. Henry Inman, A. Q. M., was on duty at that station), a large quantity of oats

and corn. I think there is due me payment for about four hundred and fifty thousand (450,000) pounds of grain so delivered.

In the spring of 1876 I was tried at Topeka, Kansas, convicted, and fined $1,000.00 on the charge of presenting a fraudulent claim against the U. S. for a part of said grain.

Since that time I have shown by satisfactory evidence that my claim is a just one and have received from the President of the United States a pardon for the alleged offense. The papers in the case are now on file in the office of the Attorney-General of the U. S. in this city.

I would respectfully request that you will cause my claim to be thoroughly investigated at an early date, to the end that I may be paid for the grain actually furnished by me.

In this connection I would state that in receiving a payment in May, 1876, on my contract for wood furnished the Q. M. Dept. at Fort Wallace, Ks., Lieut. Col. R. Saxton, deputy-q'rm'r-gen'l at Fort Leavenworth, Ks., deducted from one of my vouchers about $1,320 for an alleged overpayment for a portion of the grain delivered by me at Fort Harker.

Of the amount of grain actually delivered by me the hon. the Sec'ty of War, in January, 1870, caused me to be paid for 400,666 pounds of corn, but at a lower rate than that agreed upon by the receiving officer at the time of its delivery. In directing such payment he stated that the matter of the price of the corn would be left open for further investigation.

Very respectfully, your ob't servant,

D. H. MITCHELL.

(Indorsed:) 980. War Dep't, 1, 1877. 185. Q'rm'r Gen.'s Office. M. C. Received Feb. 6, 1877. "Q" 133.

STATE OF KANSAS, *Leavenworth County, ss:*

Fred. Zimmerman, being duly sworn, deposes and says that he was employed in the quartermaster department at F't Harker, Kansas, from July, 1867, until the middle of November, 1868, and from the middle of December, 1868, until some time in February, 1869, and assisted in weighing and receiving the grain at said post during that time. Was acting as forage-master from October 10th, 1868, to the middle of November, of 1868, and from the middle of December, 1868, until some time in February, 1869. Gave his personal attention to the weighing and receiving grain at the forage yard at said post; that the cars containing grain averaged 24,000 lbs. in weight per car.

FRED. ZIMMERMAN.

Sworn to before me and subscribed in my presence this 5th day of December, A. D. 1876.

[SEAL.] H. P. PENDERY,
Notary Public.

(Indorsed:) In re D. H. Mitchell, N. 4. Affidavit of Fred. Zimmerman. 1039, War Dep't, 4, 1877. 2-206, Q'r M'r Gen.'s Office. Received Feb. 10, 1877. With 6-185, Q. M. G. O., 1877, and 694, 1875. With 30-621, Q. M. G. O., 1878. Cls. "Q," 134, 1876.

Report upon the claim of D. H. Mitchell.

WAR DEPARTMENT,
January 11, 1870.

Claimant asks to be paid for 400,666 pounds of corn at the rate of $1.52½ per bushel of fifty-six pounds.

Claimant on the 9th of November, 1868, at Leavenworth, Kansas, contracted with Bvt. Brig. Genl. B. C. Card, chief quartermaster Department of the Missouri, to deliver at Fort Harker, on the Kansas Pacific Railroad, within four weeks from the date of his contract, sixteen thousand bushel of oats of the best quality, in sacks. He was to receive for the same 87 cents per bushel of 32 pounds.

It appears in evidence that claimant after delivering about 3,500 bushels of oats under his contract, in lieu of the 12,500 bushels of oats which remained to be delivered, did in fact deliver an equal weight of corn, being 400,666 pounds, or about 7,100 bushels.

This change was permitted by the acting depot quartermaster, who appears to have been temporarily on duty, and the corn was in fact received and consumed.

What had been done came to the knowledge of the chief quartermaster at Fort Leavenworth, by letter of March 19th, '69, from the depot quartermaster at Fort Harker, disclosing the inconvenience occasioned at that post by want of oats.

The transaction was at once repudiated by the chief quartermaster, Gen. Easton, who directed that Mr. Mitchell be notified that the corn delivered by him would be returned to him on demand at Fort Harker, from the corn then in store, and meanwhile would be held at his risk. Gen. Easton adds that he had previously refused his assent to the delivery of corn in lieu of oats to Mr. Mitchell, and that Mr. Mitchell had, on several occasions, when he had contracts at higher prices, delivered quantities in excess of his stipulations.

Gen. Easton, however, directed that Mr. Mitchell might, if he choose, be paid at the rate of $1\frac{8}{100}$ per bushel for the corn he had improperly delivered.

Various communications afterwards passed between the parties without definite result, except that the corn was not returned to Mr. Mitchell.

It appears, however, from these letters that the claimant sets up that his agreement with the depot quartermaster was to receive corn pound for pound in lieu of oats, which would bring the price of a bushel of corn of 56 pounds up to $1.52½ cents, at which rate claimant asked to be paid.

Also, from an original contract now filed, that claimant on the same day that he contracted with Gen. Card to deliver oats at Fort Harker, contracted also with Gen. Card to deliver corn at Fort Hayes during the same period at $1.69 per bushel. The freight charge on corn from Fort Harker to Fort Hayes was 17½ cents per bushel, which would make the contract price at Fort Harker $1.51½ cents per bushel.

Also, from the correspondence referred to, that the rate of $1.00 per bushel was derived from a contract effected some time previously for delivery of corn at Fort Hayes at $1.18½ per bushel.

Also, that at the time claimant delivered the corn, other corn was being delivered at Fort Harker under contracts made subsequent to claimant's contract for oats, at a cost to the United States of $1.23 and $1.27 per bushel.

Also, that the corn last referred to was contracted for during a temporary reduction of rates by railroad to Fort Harker.

Also, that by reason of this difference the corn delivered by the claimant cost him $1.35 per bushel, besides his labor and personal expense.

On the 6th of January, 1869, a letter of Hon. Sidney Clarke, of Kansas, to the Secretary of War, in relation to this case, was referred to the Quartermaster-General for immediate report.

That officer returns copies of the correspondence above cited, and under all the circumstances of the case recommends that Mr. Mitchell be paid an average of the two prices which the Government was paying for corn delivered at Fort Harker at the time that Mr. M. delivered his, which would be $1.27 per bushel, but that Mr. Mitchell be first required to deliver at the contract price the oats he failed originally to deliver.

This last the claimant represents that he has done, of which there is some evidence among the papers filed.

In relation to this case it is considered:

1. That the agreement of the acting quartermaster to receive corn in lieu of oats (about the extent of which there is some doubt), was in no sense binding on the United States.

The Court of Claims have repeatedly held that the law of general and special agents is applicable to superior and inferior agents, in the matter of contracts, in their relations to the United States and the public. The special agent can not exceed the regulations of his principal, nor the inferior officer the regulations of his superior. (Stevens' case, 2nd C. Cls., 101. Emery and Blake's case, 4 C. Cls., 401.)

The above is conclusive in its application here. Claimant had made a contract at department headquarters from which he sought to depart. Railroad and telegraph communication with department headquarters were fully open. If, as he states, he omitted to use these, and accepted the consent of a subordinate, the violation of his contract was at his own risk entirely. If, as Gen. Easton states, he applied and was refused, the aspect is decidedly more serious.

2. The tender of payment at a given rate, with the alternative of receiving back the corn, and claimant's failure to demand the corn, puts any payment beyond that rate on purely equitable grounds.

In this connection claimant urges that it was habitual for contractors to make substitutions of one grain for another in deliveries, and without complaints; that bad roads made it difficult for him to bring in oats for delivery; and that he did not know that any wrong was done or that exception would be made, and that the rate of payment asked will not more than make him good.

To all which the reply would seem to be that whatever discretion may be exercised in sanctioning a variation from the written contract on account of *of* custom or the circumstances of the case can be not only better, but in view of precedent more safely exercised upon the ground by one acquainted with the facts than here. A cus-

tom such as claimant cites may have shown clearly the necessity of an example; and the inconvenience which arose in this case may have dictated its selection.

Claimant, however, states that General Easton finally consented to pay him the cost price under other contracts at the fort, and as this tallies with the view of the Quartermaster-General it is recommended that it be allowed.

On the further representation of Mr. Clarke and the contractor that this decision involves peculiar hardship, it is considered that the payment herein recommended should be without prejudice to evidence showing a right of the contractor to an increased allowance and the assent of Gen. Easton to the same.

WAGER SWAYNE,
Col., & Bvt. Maj. Gen'l, U. S. A.

Approved.
WM. W. BELKNAP,
Sec'y of War.

Respectfully referred to the Quartermaster-General, who will pay the contractor for the corn mentioned herein at one dollar and twenty-five cents per bushel.

WM. W. BELKNAP,
Secretary of War.

WAR DEPARTMENT, *January* 12, '70.

(Indorsed:) 14-1403. Q'r M'r Gen.'s Office. Received Jul. 5, 1876. B. B. 25-546. C. 11, Jan., 1870. W. D. B'k 13, W. 1458. Decision Bk. 9, page 97.

EXHIBIT W. M. P., No. 11.

ASST.——, *April* 26, 1869.

Bvt. Major-General L. C. EASTON,
Chief Qr. Mr. Dept. Mo., Fort Leavenworth, Kans.:

GENERAL: I have the honor to state, in reply to your communication of July 16, '68, that Mr. D. H. Mitchell, in delivering grain on his contract dated November 30, '67, shipped to this post upwards of 100,000 pounds of corn in excess of his contract.

A part of this grain was afterwards transferred by Mitchell to Mr. H. L. Newman, and at the commencement of hostilities last fall Mitchell had stored here, subject to his order, 54,776 pds. corn.

At that time I was ordered to ship a large quantity of grain to Fort Dodge, and not having sufficient on hand to meet the demand, the amount above stated (54,776 pds.) was used in addition to what I had on hand.

I am, general, very respectfully, your obt. servt.,

——— ———,
Bvt. Maj. & A. Q. M., U. S. A.

EXHIBIT W. M. P., No. 12.

OFFICE ASST. QR. MR.,
Fort Harker, Ks., April 29, 1869.

Bvt. Maj. Gen. L. C. EASTON,
Chief Qr. Mr. Dep. Mo., Fort Leavenworth, Ks.

GENERAL: Referring to your communication of 15 inst., I have the honor to state that the forage master at this post report that the corn received from Mr. Mitchell in lieu of oats (contract Nov. 9) was *entirely* consumed by the public animals fed here during my absence. I enclose his certificate to that effect.

I am, general, very respectfully, your obt. servt.,

HENRY INMAN,
Bvt. Maj. & A. Q. M., U. S. A.

EXHIBIT W. M. P., No. 26.

[Telegram.]

FORT LEAVENWORTH, *M'ch* 9, 1869.

Lieut. D. MCINTOSH, A. A. Q. M.,
Fort Harker:

Mitchell must finish the delivery of sixteen thousand (16,000) bushels oats under his contract of November ninth. I have informed him that the deliveries of corn he has made will not be considered as applicable to the fulfillment of his contract for oats.

L. C. EASTON,
C. Q. M.

EXHIBIT W. M. P., No. 31.

LEAVENWORTH, *Dec. 19th*, 1868.

General EASTON:

DEAR SIR: I received your notice of being behind on my contract of the 9th. I am doing everything in my power to get the contract filled, and will continue to do so until it is filled, which, I think, will be in a few days. The roads are so bad it is almost impossible to haul to the line of the railroad.

Respectfully, yours,

D. H. MITCHELL.

EXHIBIT W. M. P., No. 32.

LEAVENWORTH, *May 4th*, 1869.

Maj. General L. C. EASTON:

DEAR SIR: If you would prefer to give the corn back they used at Fort Harker, you need not pay freight on it, as I do not want it there. I will take it here, and allow me the freight I paid. General, if they had not fed the grain, I think they would not be able to show any such amount of corn. There was some parties said they would bust me up on that contract, but, general, I feel well satisfied you will do me justice in the case; if you do wish to keep the corn, you can pay me when it will suit you.

I am, very respectfully, your obedient servant,

D. H. MITCHELL.

EXHIBIT W. M. P., No. 46.

ASST. QR. MR. OFFICE,
Fort Harker, Ks., April 26, 1869.

Bvt. Maj. Gen'l L. C. EASTON,
C. Q. M. Dept. Mo., Fort Leav'th, Ks.:

GENERAL: I have the honor to state, in reply to your communication of July 16, '68, that D. H. Mitchell, in delivering grain on his contract, dated Nov. 30, '67, shipped by (?) this post upwards of 100,000 pounds of corn in excess of his contract.

A part of this grain was afterwards transferred by Mitchell to Mr. H. L. Newman, and at the commencement of hostilities last fall Mitchell had stored here, subject to his order, 54,776 ℔ corn.

At that time I was ordered to ship a large quantity of grain to Fort Dodge, and not having sufficient on hand to meet the demand, the amount above stated (54,776 ℔) was used in addition to what I had on hand.

I am, general, very respectfully, your obd't serv't,

HENRY INMAN,
Bvt. Maj. and A. Q. M., U. S. A.

Respectfully returned. Major Inman will issue a voucher to D. H. Mitchell for all the corn received by him from Mr. Mitchell in excess of the contracts of the latter, at the contract price, provided the corn was old corn, as advertised and contracted for. If it was new corn, then issue a voucher at the price of the next contract made after that of November 30, 1867. Justice to the Government demands that the date at which this surplus delivery was made by Mr. Mitchell should be taken into account in fixing the price.

In addition to a receipt for 54,776 ℔ corn, Mr. Mitchell presented at this office one for some 25,000 ℔, dated, I believe, in September, 1868. Both receipts were returned to him. Attach this (original) to the voucher issued.

L. C. EASTON,
Deputy Qr. Mr. Gen'l, C. Q. M.

MAY 3, 1879.

EXHIBIT W. M. P., No. 47.

Respectfully returned to Major Inman. The instructions in my endorsement of the 3d inst. were given under a misapprehension of the facts.

It now appears from the enclosed voucher and from his letter that Major Inman did not receive the corn until Dec'r 1, 1868, although it was stored at Fort Harker

prior to that time "subject to Mr. Mitchell's order" and I suppose for his convenience. At the time it was accepted by Major Inman, which time appears from these vouchers to have been December 1, 1868, the Government was paying for corn at Harker $1.29 per bush. (I take the price of contract made nearest to that time.) My recollection also that the receipt for the smaller quantity (517 bush.) which Mr. Mitchell exhibited here was dated September, 1868. Corn delivered at that time should not be paid for at the price prevailing in Nov'r, 1867. I wish a settlement made which will be just to the Government and to Mr. Mitchell. If the corn was not received by Major Inman until Dec. 1, 1868, and the Government was not responsible to Mr. Mitchell for it until that time, then I do not think that a rate higher than the Government was paying at that time should be allowed Mr. Mitchell.

Such complications will be avoided if in future grain delivered without authority is not received into Government buildings.

L. C. EASTON,
D. Q. M. G., C. Q. M.

MAY 12, 1869.

[Court of Claims. No. 11940. D. H. Mitchell *v.* The United States.]

The deposition of Addison Jones, for claimant, taken at Omaha, Nebr., on the 23d day of February, A. D. 1883.

Claimant's counsel, N. J. Burnham; defendants' counsel, F. H. Howe.

First general interrogatory on the part of the commissioner. State your name, age, occupation, place of residence the past year; whether you have any, and what interest in the claim in controversy, and whether you are related to the claimant.

Answer. Addison Jones; age, 38; I have charge of the freight records of the Union Pacific Railroad Company; residence, Omaha, Nebr.; I have no interest in the claim in controversy, and am not related to the claimant.

Being further interrogated by N. J. Burnham, esq., on behalf of the claimant, the witness says:

I have in my possession and under my charge as an officer of the Union Pacific Railway Company the press-letter copies and written copies of the original way-bills of certain cars of grain shipped from various points in Kansas to Fort Harker, Kans., during the fall and winter of 1868–'69 and the spring of 1869 for the account of D. H. Mitchell.

Question 1. State what the paper is I hand you.

(Objected to as incompetent, immaterial, and irrelevant.)

Answer. This is a true copy of the original way-bill number 22, from Perry, Kans., to Fort Harker, Kans., for 145 sacks of oats, Griffith & D. consignor.

(The paper is offered in evidence and hereto attached, marked Exhibit A. S. No. 1.)

(The paper offered in evidence objected to as incompetent and immaterial.)

Question 2. What are the papers I now hand you?

(Same objection.)

Answer. Forty-four copies of way-bills from various stations to Fort Harker, commencing with December 17, 1868, and ending with April 13, 1869, as follows:

Question 3. Please describe them by dates and contents.

(Same objection.)

Answer. 1st. December 17, 1868: 119 sacks oats, 20 sacks corn.
2d. December 18, 1868: 165 sacks corn.
3d. December 23, 1868: 155 sacks oats.
4th. December 23, 1868: 165 sacks shelled corn.
5th. December 24, 1868: 47 sacks oats, 94 sacks corn.
6th. December 24, 1868: 165 sacks corn.
7th. December 29, 1868: 165 sacks shelled corn.
8th. December 31, 1868: 150 sacks oats.
9th. January 5, 1869: 147 sacks oats.
10th. January 11, 1869: ——— sacks oats and 30 sacks corn.
11th. January 11, 1869: 160 sacks shelled corn, No. 4, car No. 1383.
12th. January 11, 1869: 160 sacks shelled corn, No. 5, car No. 1388.
13th. January 11, 1869: 160 sacks shelled corn, No. 3, car 1354.
14th. January 12, 1869: 165 sacks corn.
15th. January 13, 1869: 165 sacks corn.
16th. January 15, 1869: 160 sacks shelled corn, No. 6, car 1310.
17th. January 15, 1869: 160 sacks shelled corn, No. 7, car 1320.
18th. January 18, 1869: 165 sacks corn.
19th. January 19, 1869: 170 sacks corn, No. 56, car 1443.
20th. January 19, 1869: 170 sacks corn, No. 57, car 1254.

21st. January 20, 1869: 160 sacks shelled corn.
22d. January 21, 1869: 165 sacks corn.
23d. January 22, 1869: 165 sacks corn.
24th. January 23, 1869: 160 sacks shelled corn, No. 11, car 1432.
25th. January 23, 1869: 160 sacks shelled corn, No. 12, car 1315.
26th. January 25, 1869: 165 sacks corn.
27th. February 1, 1869: 165 sacks corn.
28th. February 2, 1869: 165 sacks corn.
29th. February 8, 1869: 160 sacks shelled corn.
30th. February 10, 1869: 160 sacks shelled corn.
31st. February 20, 1869: 160 sacks shelled corn.
32d. March 4, 1869: 1 car oats (150 sacks).
33d. March 6, 1869: 155 sacks oats, No. 23, car 1303.
34th. March 6, 1869: 153 sacks oats.
35th. March 6, 1869: 1 car corn, in sacks.
36th. March 6, 1869: 155 sacks oats, No. 22, car 1367.
37th. March 6, 1869: 155 sacks oats, No. 24, car 1239.
38th. March 8, 1869: 160 sacks oats.
39th. March 11, 1869: 41 sacks oats.
40th. March 17, 1869: 1 car oats, in sacks.
41st. March 18, 1869: 1 car oats, in sacks.
42d. March 23, 1869: 150 sacks oats.
43d. April 9, 1869: 145 sacks oats.
44th. April 13, 1869: 147 sacks oats.

The above papers are here offered in evidence by the complainant's counsel, and are marked respectively from A. S. No. 2 to A. S. No. 45, inclusive.

(The papers above offered in evidence are objected to by defendants' counsel as incompetent and irrelevant and immaterial.)

Question 4. Do you know that these are all the way-bills the company have of this description?

Answer. No, sir; there may be some more. But these are all I have been able to find.

Question 5. Do you know that any have been lost?

Answer. No, sir; I do not.

Question 6. What was the true measure of the contents of a car at that time?

Answer. The tariff book at that time accepted 18,000 pounds as a car-load. They often put as high as 26,000 and 29,000 pounds in a car.

Question 7. If shipments as aforesaid had not been delivered to consignee at Fort Harker, would the way-bills, copies of which are herein introduced and numbered, indicate the fact; that is, would the originals?

Answer. The originals would indicate the fact as a matter of course; also the copies, which I have in my office, of which the above are copies.

Question 8. What has become of the original way-bills?

Answer. It is reported that Fort Harker was struck by lightning, I think in 1870, and that all the original way-bills of which these are copies were destroyed by fire at that time.

Question 9. Among the way-bills handed the notary I do not find shipments of four car-loads of grain from Fort Leavenworth to Fort Harker. If any such shipments were made on account of Mitchell by General B. C. Card, would not the way-bills show that fact?

(Objected to as leading.)

Answer. They should be in my possession. In my investigations so far I have failed to find any such bills.

Question 10. What has been done with the original way-bills of which these are copies, and other way-bills of this character?

(Objected to as incompetent, irrelevant, immaterial.)

Answer. The original press or written copies way-bills were all supposed to have been sent by S. T. Smith, an official of the Kansas Pacific Road, to M. H. Goble, freight auditor of the Union Pacific Railroad, late in 1879, and were turned over to me to be filed, and since I have had them I have moved them twice. The first time I took them out of the boxes and filed them on the shelving in the general office. I had some men help me. Some may have been lost or misplaced then. These bills of November and December, 1868, January and February, 1869, did not come in their proper place, but when I received them they were in a stray box, not marked or labeled. In 1882, late in the fall, by order of Mr. Goble, I moved them from the office in Farnum street, with a lot of other records, to the shop, there to be stored. I was about three weeks in this last move, and I had several men helping me. The bills were delivered to me at the shop in very bad shape. The distance they were moved was from a half to three-quarters of a mile, I think. They were hauled in company wagons, with rubber bands and strings around them. Some had rubber bands and some had strings. The

men who helped move were laborers in the employ of the road. The bills that I have got are now in the record-room in the shops. The bills which I speak of were tied up in bundles; that is, the bills of November, December, January, and February, and each month in a separate bundle, and had the appearance of having been handled by some one for some purpose.

(Defendants' counsel objects to the whole answer as incompetent, irrelevant, and immaterial.)

Cross-examination by F. H. Howe, esq., defendants' counsel:

Question 1. State what the paper I hand you is.

Answer. It is a press copy of way-bill No. 239, from Lawrence to Harker, March 23, 1869.

Question 2. Look at Exhibit A. S. No. 43, and state whether it is the copy which you have testified as being made of the paper last handed you.

Answer. It is, with the exception of the printed matter and the certificate signed by the freight auditor.

(The paper is offered in evidence by the defendants' counsel, and a copy is attached to this deposition, marked Exhibit A.)

Question 3. State whether all of the original papers testified about by you in your examination-in-chief are not all substantially in the same form; that is, with the printing and the certificate left out.

Answer. They are.

Question 4. Then I understand you to say that the original papers about which you have been testifying are press-letter copies of the original way-bills to which they relate.

Answer. Some are press-letter copies, and some are written. Sometimes it was not convenient to take press copies, but way-bills were made in duplicate form.

Question 5. Have you the original way-bills that were sent to Harker with the goods?

Answer. I have not.

Question 6. What became of them?

Answer. It is reported that Fort Harker, I think in 1870, was struck by lightning, and that these originals were burned.

Question 7. You are unable, then, to produce the originals?

Answer. I am.

Question 8. Would the originals in the ordinary course of business show the receipt of goods by the consignee, if they had been received by him?

Answer. They should.

Question 9. Do the press copies or written copies about which you have testified show the receipt by the consignee?

Answer. They do not.

Question 10. Have you any record in your office showing the receipt of the goods specified in the way-bills about which you have testified?

Answer. To the best of my knowledge, I have not.

Question 11. How did you come to produce these exhibits before this commission?

Answer. I was ordered here by the court, and the copies of those way-bills were ordered by D. M. Sells, chief clerk of the freight auditor's office.

Question 12. What court?

Answer. I don't know; this court.

Question 13. Did you get any subpœna?

Answer. I did not.

Question 14. What papers did Mr. Sells tell you to produce?

Answer. The press copies or written copies about which I have testified.

Question 15. Did he confine you to those?

Answer. No. He told me to produce all the records in my possession for grain shipped for D. H. Mitchell to Fort Harker in November and December, 1868, and January and February, 1869, first; and the last note that Mr. Mitchell wrote to him for additional copies, I think, run into May, 1869. And these I was also ordered to produce.

Question 16. Have you produced them all?

Answer. All that I have been able to find. There may have been some grain shipped by Mr. Mitchell to Fort Harker, bills for which I have not been able to find.

Question 17. Have you made a pretty careful search?

Answer. I have made a very careful search. Yet I may have missed some bills; I do not know.

Question 18. Do you think you have?

Answer. No.

Question 19. Did you ever hear of any of these bills being lost during the various changes about which you have testified? I refer to these bills in which Mr. Mitchell is interested.

Answer. No.

Re-examination:

Question 1. I find that in a telegram sent by the acting depot quartermaster, Donald McIntosh—a telegram from Fort Harker, of March 9, 1869, to General L. C. Easton—that Mitchell had shipped eight car-loads of oats and three car-loads of corn. If this were correct, would you not have the way-bills for them?

Answer. I should have them; that is, the press copy.

Question 2. Have you got them; if not, what has become of them?

Answer. If I have not got them I do not know what has become of them.

Question 3. Do you not know that they have been lost?

Answer. No, sir.

Question 4. Have you made any search for them?

Answer. I do not know whether I have searched for them or not. I do not know what the station is. Out of about ninety stations under the management of the Kansas Pacific then, I have looked at eight or ten; that is, the stations I looked over at direction of Mr. Sells.

Question 5. Did you look over the Leavenworth station?

Answer. I think I did, and failed to find any shipments for Mr. Mitchell.

Recross-examination:

Question 1. Do you know how it happened that your attention was particularly directed to these eight or ten stations by Mr. Sells?

Answer. I think that Mr. Gannett, the auditor, had received a communication—from whom, I do not remember. It was referred to Mr. Goble, who ordered me, through Sells, the chief clerk, to produce the papers.

Question 2. Was your attention directed to those eight or ten stations by the claimant?

Answer. Yes.

Question 3. Have you examined as to all the stations to which your attention was directed by Mr. Mitchell?

Answer. Yes; I have examined all the bills in my possession as to the stations to which Mr. Mitchell or any one else has called my attention.

Last general question by the commissioner. Do you know any other matter relative to the claim in question? If you do, state it.

Answer. Nothing.

The witness here states that he can not produce the original press copies and written copies about which he has testified and permit them to be attached to this deposition, because the Union Pacific Company requires them to be retained as a part of their records.

ADDISON JONES.

Subscribed in my presence and sworn to before me this 23d day of February, 1883.

ALBERT SWENGTANDER,
Notary Public.

No. 1.—A. S.

UNION PACIFIC RAILWAY COMPANY, FREIGHT AUDITING DEPARTMENT.

Copy of billing.

Freight from Perry to Fort Harker; No. car, 1438; initial, ——; consignor, Griffith & D.; consignee, Lieut. Cook; destination, Ft. Harker, Kans.

Date W. B.	No. W. B.	No. p'k'g's.	Articles.	Weight.	Rate.	Back charges.	Local charges.	Total charges.
1868. Nov. 21..	22	145	S'ks oats	18,000	75	.....	135.00	135.00

M. H. GOBLE,
Freight Auditor.
Per F. WINNING.

OMAHA, NEB., *July* 13, 1881.

No. 2.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 2.

UNION PACIFIC RAILWAY, E. D.

Car No. 1391; initial,—.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Dec. 17, 1868

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	119	Sacks oats.					
		20	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 3.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 3.

UNION PACIFIC RAILWAY, E. D.

Car No. 1200; initial,—.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Dec. 18, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 4.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 36.

UNION PACIFIC RAILWAY, E. D.

Car No. 1441; initial, —.

Local way-bill of freight forwarded from Perry to Fort Harker, date Dec. 23, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
R. S. Griffith for D. H. Mitchell.	Q. M. Ft. Harker, Kans.	155	Sk's oats.....	18,000	75	.....	135.00	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

(In pencil): See letter of Inman to Griffith, Jan'y 27, 1869. This car contains 19,500 lbs.

No. 5.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 2.

UNION PACIFIC RAILWAY, E. D.

Car No. 1360; initial, —.

Local way-bill of freight forwarded from Williamston to Ft. Harker, date Dec. 23, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	Capt. Kimball, % D. A. M.	165	Sacks shelled corn.	18,000	113	.....	203.40	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 6.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 142.

UNION PACIFIC RAILWAY, E. D.

Car No. (1525, obscure); initial.

Local way-bill of freight forwarded from Lawrence to Harker, date Dec. 24, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
W. & M.	A. Q. M., Fort Harker.	46 94	Sacks oats " corn Shippers' count	18,000	80	.....	.....	144.00

A true copy of the original impression way-bill.

M. H. GOBLE,
Freight Auditor.

No. 7.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 5.

UNION PACIFIC RAILWAY, E. D.

Car No. 1376; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Dec. 24, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A.Q.M., Ft. Harker	165	Sacks corn	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 8.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 4.

UNION PACIFIC RAILWAY, E. D.

Car No. 1348; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Dec. 29, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	Quartermaster, Fort Harker.	165	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 9.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 44.

UNION PACIFIC RAILWAY, E. D.

Car No. 1207; initial, —.

Local way-bill of freight forwarded from Perry to Fort Harker, date Dec. 31, 1868.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
R. S. Griffith for D. H. Mitchell	Lieut. Cook, Q. M., Fort Harker.	150	S'ks oats.....	18,000	75	.....	135.00	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

(In pencil:) See letter of Inman to R. S. Griffith, of Jan'y 27, '69; says this car contains 20,110 lbs.

No. 10.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 3.

UNION PACIFIC RAILWAY, E. D.

Car No. 1363; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Jan'y 5, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Fort Harker.	147	Sacks oats.....	18,000	88	Paid.		154.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 11.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 6.

UNION PACIFIC RAILWAY.

Car No. 1325; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date January 11, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	.....	Sacks oats.....	.....	.....	.....	.....	.....
		30	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 12.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 4.

UNION PACIFIC RAILWAY, E. D.

Car No. 1383; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 11, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 13.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 5.

UNION PACIFIC RAILWAY, E. D.

Car No. 1388; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 11*th*, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 14.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 3.

UNION PACIFIC RAILWAY, E. D.

Car No. 1354; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 11th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 15.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 7.

UNION PACIFIC RAILWAY, E. D.

Car No. 1232; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 12, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	1,800	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 16.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 8.

UNION PACIFIC RAILWAY, E. D.

Car No. 1245; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 13, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 17.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 6.

UNION PACIFIC RAILWAY, E. D.

Car No. 1310; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 15th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 18.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 7.

UNION PACIFIC RAILWAY, E. D.

Car No. 1320; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date January 15th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sks. shelled corn..	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 19.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 9.

UNION PACIFIC RAILWAY, E. D.

Car No. 1375; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Jan'y 18, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell....	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 20.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 56.

UNION PACIFIC RAILWAY, E. D.

Car No. 1443; initial, —.

Local way-bill of freight forwarded from Grant's to Fort Harker, date Jan'y 19th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	Qr. Mr., Ft. Harker.	170	Sacks corn.....	18,000	73	.....	131.40	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 21.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 57.

UNION PACIFIC RAILWAY, E. D.

Car No. 1254; initial, —.

Local way-bill of freight forwarded from Grant's to Fort Harker, date Jan'y 19th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	Qr. Mr., Ft. Harker.	170	Sacks of corn.....	18,000	73	.....	131.40	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 22.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 9.

UNION PACIFIC RAILWAY, E. D.

Car No. 1421; initial, —.

Local way-bill of freight forwarded from Williamstown to Ft. Harker, date Jan'y 20th, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	A. Q. M., Ft. Harker.	160	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 23.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 10.

UNION PACIFIC RAILWAY, E. D.

Car No. 1374; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 21st, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 24.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 11.

UNION PACIFIC RAILWAY, E. D.

Car No. 1426; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 22, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 25.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 11.

UNION PACIFIC RAILWAY, E. D.

Car No. 1492; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Jan'y 23rd, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	160	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 26.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 12.

UNION PACIFIC RAILWAY, E. D.

Car No. 1315; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Jan'y 23rd, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A.Q.M., Fort Harker	160	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 27.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 12.

UNION PACIFIC RAILWAY, E. D.

Car No. 1361; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Jan'y 25, 1869

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Ft. Harker.	165	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 28.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 1.

UNION PACIFIC RAILWAY, E. D.

Car No. 1354; initial, —.

Local way-bill of freight forwarded from Fairmount to Ft. Harker, date Feb. 1, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Fort Harker.	160	Sacks corn.....	18,000	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 29.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 2.

UNION PACIFIC RAILWAY, E. D.

Car No. 1234; initial, —.

Local way-bill of freight forwarded from Fairmount to Fort Harker, date Feb. 2, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	A. Q. M., Fort Harker.	165	Sacks corn.....	18,090	88	.....	.....	158.40

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 30.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 3.

UNION PACIFIC RAILWAY, E. D.

Car No. 1343; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Feb. 8, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.....	A. Q. M., Fort Harker.	160	Sacks shelled corn.	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

H. M. GOBLE,
Freight Auditor.

No. 31.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 4.

UNION PACIFIC RAILWAY, E. D.

Car No. 1201; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Feb. 10, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.....	A. Q. M., Fort Harker, Kansas.	160	Sacks shelled corn	18,000	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 32.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 2.

UNION PACIFIC RAILWAY, E. D.

Car No. 1429; initial, —.

Local way-bill of freight forwarded from Williamstown to Fort Harker, date Feb. 20, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.....	A. Q. M., Fort Harker.	160	Sacks shelled corn	18,060	76	.....	136.80	.....

A true copy of the original way-bill.

M. H. GOBLE,
Freight Auditor.

No. 33.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 49.

UNION PACIFIC RAILWAY, E. D.

Car No. 144; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 4, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Wetherell	A. Q. M., Harker....	1	Car oats (150 sax)	18,000	80	.....	144.00	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 34.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 23.

UNION PACIFIC RAILWAY, E. D.

Car No. 1303; initial, —.

Local way-bill of freight forwarded from Topeka to Harker, date M'ch 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	Maj. Inman, Ft. Harker.	155	Sax oats.....	18,600	59	.....	106.20	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 35.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 25.

UNION PACIFIC RAILWAY, E. D.

Car No. 1322; initial, —.

Local way-bill of freight forwarded from Topeka to Harker, date M'ch 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell.....	Maj. Inman, Ft. Harker.	153	Sax oats.....	18,000	59	.....	106.20	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific R'y.

M. H. GOBLE,
Freight Auditor.

No. 36.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 65.

UNION PACIFIC RAILWAY, E. D.

Car No. 1235; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date Mc'h 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Schweitzer	Major Inman, % D. H. Mitchell, Harker.	1	Car corn in sax, shippers' count.	18,000	70	.....	126.00	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific R'y.

H. M. GOBLE,
Freight Auditor.

No. 37.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 22.

UNION PACIFIC RAILWAY, E. D.

Car No. 1367; initial, —.

Local way-bill of freight forwarded from Topeka to Harker, date M'ch 6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	Maj. Inman, Ft. Harker.	155	Sax oats.....	18,000	59	.....	106.20	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE.
Freight Auditor.

No. 38.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 24.

UNION PACIFIC RAILWAY, E. D.

Car No. 1239; initial, —.

Local way-bill of freight forwarded from Topeka to Harker, date M'ch.6, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. Mitchell	Major Inman, Ft. Harker.	155	Sax oats.....	18,000	59	.....	106.20	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 39.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 74.

UNION PACIFIC RAILWAY, E. D.

Car No. 1215; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 8, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Wetherell	A. Q. M., Harker ...	160	Sax oats, shipper's count.	18,000	70	.....	126.00	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 40.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 109.

UNION PACIFIC RAILWAY, E. D.

Car No. 1331; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 11, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.*	Local charges.	Prepaid.
Wetherell	A. Q. M., Harker ...	41	Sax oats, shipper's count. East end of car.	4,670	113	.....	52.77	.....

* Order of gen'l supt.

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 41.—A. S.

F. A. 1.

LOCAL WAY-BILL NO. 167.

UNION PACIFIC RAILWAY, E. D.

Car No. 1304; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 17, 1869.

Consignor.	Consignee and destination,	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Schweitzer	Major Inman, Harker; % D.H. Mitchell.	1	Car oats in sax, shipper's count.	18,000	70	.....	126.00	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 42.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 192.

UNION PACIFIC RAILWAY, E. D.

Car No. 1387; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date M'ch 18, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
Schweitzer	Maj. Inman, Harker; % D.H.Mitchell.	1	Car oats in sax, shipper's count.	18,000	78	.....	131.40	.....

A true copy of the original impression way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

No. 43.—A. S.

F. A. 701.

LOCAL WAY-BILL No. 239.

UNION PACIFIC RAILWAY.

Car No. 1228; initial, —.

Local way-bill of freight forwarded from Lawrence to Harker, date March 23, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
W. & M.....	A. Q. M., Harker....	150	Sacks oats, shippers' counts.	18,000	78 5c	.....	133.38	.....

I certify that the foregoing is a true copy of the original tissue copy of the way-bill on file in this office.

JNO. G. TAYLOR,
Freight Auditor.
By D. AUBRAY,
Chief Clerk.

(Stamped:) Union Pacific Ry., freight auditor's office, Omaha, Nebraska, Feb. 22, 1883.

No. 44.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 15.

UNION PACIFIC RAILWAY, E. D.

Car No. ——; initial —.

Local way-bill of freight forwarded from Wanmego to Fort Harker, date April 9, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.	Maj. Inman, Harker.	145	Sacks oats	18,000	59			106.20
			Less 5 per ct.					5.31
							Paid..	100.89

A true copy of the original way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,

No. 45.—A. S.

F. A. 1.

LOCAL WAY-BILL No. 20.

UNION PACIFIC RAILWAY, E. D.

Car No. ——; initial —.

Local way-bill of freight forwarded from Wamego to Harker, date April 13, 1869.

Consignor.	Consignee and destination.	Packages.	Description.	Weight.	Rate.	Back charges.	Local charges.	Prepaid.
D. H. M.	Maj. Inman, A. Q. M., Harker.	147	Sks. oats	18,000	59			106.20
			Less 5%					5.31
							Paid..	100.89

A true copy of the original way-bill on file in the freight auditor's office, Union Pacific Ry.

M. H. GOBLE,
Freight Auditor.

EXHIBIT W.—A. S.

239 1228			Lawrence	Harker Mch 23" .9	
W and M	A Q M	130 sacks oats	$18000\frac{78}{6}$c		
	Harker	shippers count		13338	13338

The deposition of F. C. Bulkley, for claimant, taken at Leavenworth, Kans., on the 19th day of February, A. D. 1883.

Claimant's counsel, W. C. Hook; defendants' counsel, F. H. Howe.

First general interrogatory by the commissioner. State your name, occupation, age, place of residence the past year; whether you have any, and if any what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. F. C. Bulkley; age, 50 years; occupation during the last year, farmer; Leavenworth, Kansas; have no interest in the claim, and am not related to the claimant.

And being further examined by claimant's counsel, witness says:

I was a Government contractor during the year 1868, and up to June, 1869. I hauled a great deal of grain during that time for the Government, and was familiar with the business. All the corn I ever furnished the Government was in gunnies.

Question 1. State as near as you can the average weight of sacks filled with corn for the Government, as above mentioned, during the time that you have specified, at Fort Leavenworth, or any other place within the State of Kansas or Indian Territory, at which corn was furnished during such time.

(Objected to by Government's counsel, that no foundation has been laid to show that the witness is competent to answer the question.)

Answer. The sacks would average from 120 to 140 pounds, owing to the way they were filled.

Question 2. State, if you know, the average capacity of sacks in use at the time above specified—in use by the trade—for supplying shelled corn to the Government.

(Same objection.)

Answer. I do know; from 120 to 150 pounds. I have shipped and sold a great deal of corn during that year, and know it from the average I received from the Government and other parties. I furnished corn to the Government at different times from 1862 to 1873, and during that time the sacks in use were of the same capacity as before mentioned.

Question 3. State whether or not during any of the years above mentioned you shipped any corn upon any railway for the Government; and, if so, state if you recollect the number of pounds that the company limited to the car, and state what you know as to the manner in which way-bills were made out, and whether they were generally correct as to the number of sacks and pounds.

(Objected to as incompetent and irrelevant.)

Answer. I can only answer as to the shipments made by myself. At that time the cars were generally billed at 18,000 pounds, and we were charged by the car, but we always put on what we could get on, and got paid by the Government for what we had on the car. We frequently put on more sacks than the way-bill showed.

Cross-examination:

Being interrogated by the Government counsel, the witness says:

The capacity of sacks spoken of in my direct examination refers to shell corn. If ear corn was packed in the same sack you could not get more than 70 pounds in a sack. The testimony I have given relates to my own experience. I have no knowledge of any corn delivered to the Government by the claimant.

Redirect:

Of any corn other than shelled corn being delivered to the Government in gunny sacks I have no knowledge.

F. C. BULKLEY.

Subscribed and sworn to before me this 19th day of February, A. D. 1883.

W. M. PINKSTON,
Notary Public.

The deposition of Owen Duffy, for claimant, taken at Leavenworth, Kans., on the 19th day of February, A. D. 1883.

Claimant's counsel, W. C. Hook; defendant's counsel, F. H. Howe.

First general interrogatory by the commissioner. State your name, occupation, age, place of residence the past year; whether you have any, and if any what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Owen Duffy; age is 47 years; occupation, woolen business and handling grain; reside at Leavenworth, Kans.; have no interest in the claim, and am not related to the claimant.

Being examined by W. C. Hook, esq., counsel for claimant:

I have been in the grain business since 1867. I have shipped grain to the Government and private parties, and to the markets. I have had contracts with the Government for furnishing shelled corn during the years stated.

Question 1. State, if you know, the average capacity of sacks used by the Government and by private persons for shelled corn during the time that you were in the grain business.

(Objected to by the Government's counsel, because the witness has not been shown to be competent to answer the question.)

Answer. I do not know. By refreshing my memory from looking over my books, I find that in the month of March, 1870, I shipped fourteen cars of corn to Saint Louis, containing 3,967 sacks, which netted 10,824 bushels and 30 pounds of corn, which appears to make about 150 pounds of corn to the sack. It was shipped to J. W. Booth & Son, of Saint Louis. I think the sacks used in this shipment were the gunny sacks in use at that time. I think there can be no doubt about it, as I do not know of any other kind of sack being in use at that time, nor for two or three years prior thereto—I mean sacks for shipping corn. There might have been a three-bushel sack in use at that time, but I do not know that it was in general use.

(The whole of the above testimony is objected to by the Government counsel as being incompetent and irrelevant, and as not tending to prove the question at issue.)

Cross-examination:

Witness being examined by Government counsel:

In 1868 and 1869 the sacks in use would hold 150 pounds, if filled as stated in the shipment above referred to. The last I have seen, according to my book, is about 126 pounds to the sack. If it was ear corn these sacks would contain about half of the weight stated above, but I never heard of any being shipped that way to the Government.

OWEN DUFFY.

Subscribed and sworn to before me this 19th day of February, A. D. 1883.

W. M. PINKSTON,
Notary Public.

[Court of Claims. No. 11940. D. H. Mitchell *v.* The United States.]

Deposition of Fred Zimmerman, for claimant, taken at Leavenworth, Kans., on the 14th day of December, A. D. 1880.

Claimant appeared on his own behalf; defendant's counsel, R. A. Orbison.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and if any what interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Fred Zimmerman; my occupation is United States internal-revenue ganger; my age is forty years; my place of residence the past year is Leavenworth City, Kans.; I have no interest whatever in the claim which is the subject of inquiry; I am no relation whatsoever to the claimant.

Being interrogated by DAVID H. MITCHELL, the claimant, the witness says:

Question 1. State where you were in the winter of 1868–'69.

Answer. I was at Fort Harker, Kans.

Question 2. State what capacity you were acting in at Fort Harker.

Answer. I was a forage-master.

Question 3. I'll get you to state if you knew of D. H. Mitchell shipping corn to Fort Harker that winter.

Answer. I did.

Question 4. State, if you know, the average weight of the cars shipped there by D. H. Mitchell, during the winter of 1868–'69.

Answer. I don't remember whether Mr. Mitchell was the only contractor that delivered there or not, consequently I don't know whether they were his cars or the other party's cars, if any other party was there. The cars that were received there about that time—the weight of the grain that was received in those cars—was about 24,000 pounds, on an average, per car-load.

Question 5. State if you have any recollection of car-loads of corn that were shipped that winter weighing 28,000 and 29,000 pounds.

Answer. I don't recollect of any cars weighing 28,000 or 29,000 pounds, but I do recollect of one car-load of either corn or oats weighing 27,800 pounds.

Question 6. State, if you know, how many cars of corn were shipped there that winter by D. H. Mitchell.

Answer. I don't know.

Question 7. What became of the books that you kept as forage-master during the winter of 1868–'69, at Fort Harker, Kans.?

Answer. I turned them over to my successor, Green M. Thompson.

Question 8. Do you know whether or not there was a large amount of corn and oats shipped to Fort Harker the winter of 1868–'69?

Answer. I know there was a large amount of grain at Fort Harker that winter. Some of it was taken from the cars and stored there, and other was taken directly from the cars and loaded on wagons, taken to the forage-yard, weighed, and distributed from there to other posts.

Question 9. Was Fort Harker a distributing point for other frontier posts that winter?

Answer. It was, in the first part and middle of the winter of 1868–'69.

Cross-examination:

Being cross examined by R. A. Orbison, esq., for the United States, the witness says:

Cross-question 1. How far was Fort Harker from the railroad station?

Answer. The fort itself was very near a quarter of a mile, and the forage-yard very near three-quarters of a mile.

Cross-question 2. Did you see the grain unloaded from the cars shipped by D. H. Mitchell, during the winter of 1868–'69?

Answer. I did not.

Cross-question 3. Where did your duties require you to be at that time?

Answer. At the forage-yard, hay-yard, and wood-yard.

Cross-question 4. How was the grain transported from the cars to the forage-yard?

Answer. If you refer to the grain that was to be stored in the forage-yard, it was hauled in Government teams.

Cross-question 5. How was that transported which was not stored at the forage-yard?

Answer. Part of it was hauled up from the depot to the forage-yard by Government teams and weighed there at the scales, and reloaded in contractors' wagons, and part of it—the contractors' wagons—were first weighed at the scales, driven down to the depot, loaded, and reweighed at the scales, to ascertain the weight of the grain.

Cross-question 6. Did you see any of the cars containing the grain weighed, or did you see the grain weighed as it came out of the cars?

Answer. No; I weighed the grain at the scales at the forage-yard myself.

Cross-question 7. How was the corn which Mr. Mitchell shipped received that winter?

Answer. The corn that was received at the forage-yard at Fort Harker that winter was shelled, and received in gunny sacks.

Cross-question 8. Is it not a fact that those gunny sacks contained about two bushels and a peck of corn?

Answer. The sacks contained all the way from 118 to 155 pounds of corn, but the average was 127, 128, or 129 pounds. I speak in general terms; this does not refer particularly to the winter of 1868–'69.

Cross-question 9. Did not the corn received during the winter of 1868–'69, from Mr. Mitchell, average about the same weight per sack as you have stated in your last answer?

Answer. To my recollection they were heavier.

Cross-question 10. Do you not know that those cars containing the corn that Mr. Mitchell shipped during the winter of 1868–'69, on the Kansas Pacific Railway to Port Harker, were billed at 18,000 pounds.

Answer. I do not.

Cross-question 11. How can you recollect at this date that those cars that were re-

ceived twelve years ago from Mr. Mitchell or any one else at Fort Harker averaged 24,000 pounds?

Answer. It is my general recollection.

Cross-question 12. Can you state the number of sacks of corn that were received from any one car during that winter?

Answer. I can not.

Cross-question 13. Can you state the average number of sacks per car received that winter?

Answer. I can not.

Cross-question 14. State briefly how the accounts of corn and oats received were kept by you and to whom you accounted.

Answer. I kept a book in which I kept an account of grain received and issued daily, and I made a daily report of grain received and issued to the quartermaster or acting quartermaster at Fort Harker, who, during the winter of 1868–'69, were Maj. Henry Inman, Lieut. L. W. Cook, Capt. John F. Rogers, United States military store-keeper; and I think Lieutenant Mackintosh, I think, of the Seventh Cavalry.

Cross-question 15. When did you leave Fort Harker?

Answer. I think February or March, 1869.

Redirect examination:

On redirect examination by the claimant, the witness says:

Redirect question 1. State if you haven't heard this matter spoken of ever since the winter of 1868–'69.

Answer. I think it was 1872 or 1873 that the matter came prominently before me.

Recross-examination:

Recross-question 1. Were you not absent from Fort Harker from the middle of November, 1868, to the middle of December, 1868?

Answer. Under Lieut. L. W. Cook's administration, I was away a week, ten, or fourteen days, but just when it was I don't know, and how long.

Recross question 2. Did you not make an affidavit on the 5th of December, 1876, before H. R. Pendery, that you were absent from Fort Harker from the middle of November, 1868, to the middle of December, 1868?

Answer. I do not recollect, but the pay rolls at Fort Leavenworth, Kansas, will show exactly the time I was away.

(Paper marked "A, Henry Wollman, notary public," shown witness.)

Recross-question 3. Is the signature Fred Zimmerman on this paper yours?

Answer. Yes.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I don't know anything else.

FRED. ZIMMERMAN.

Sworn to and subscribed before me this 14th day of December, A. D. 1880.

[SEAL.] HENRY WOLLMAN,
Notary Public, Commissioner.

Deposition of John A. Gaston, for claimant, taken at Deadwood, Dakota Territory, on the 14th day of December, A. D. 1881.

Claimant's counsel, A. R. Z. Dawson; defendants' counsel, A. J. Plowman.

And thereupon the said John A. Gaston was examined by the counsel for the claimant and, in answer to interrogatories, testified as follows:

Question 1. State your name, age, residence, and occupation.

Answer. John A. Gaston; am forty-seven years old; reside at Deadwood, Dak., and am a broker by occupation.

Question 2. State where you resided and what business you were engaged in during the fall of 1868, and the winter of 1868 and 1869.

Answer. I resided in Leavenworth, Kans., and was engaged in the grain and produce business.

Question 3. State whether or not you shipped any corn from Leavenworth, Kans., to the quartermaster at Fort Harker, Kansas, during that time.

(This question is objected to upon the ground of immateriality.)

Answer. I did.

Question 4. State for whom you shipped such corn.

Answer. For David H. Mitchell.

Question 5. State as near as you can the number of car-loads shipped and the time when shipped.

Answer. In answer to this I must rely solely upon memory, as all my books and paper were destroyed by fire. I should judge, however, that I shipped seven or eight car-loads, and I think it was in December, 1868. I think it was before January 1 of 1869.

Question 6. State whether or not David H. Mitchell paid you for such corn, and state whether or not you received pay therefor from the United States Government or any other person than David H. Mitchell.

Answer. Yes, sir; David H. Mitchell paid me. No one else ever paid me for it; the Government never paid me.

Question 7. State if you can what price per bushel said Mitchell paid you for said corn.

Answer. I will say, as near as I can recollect, about 85 cents; it was about that; it may have been more than that; that was for corn shelled, sacked, and on board the cars.

Question 8. State what, if any, interest, direct or indirect, you have in the claim which is the subject of inquiry, and whether you are related to the claimant, David H. Mitchell; and, if so, in what degree.

Answer. I have no interest in the claim whatever; there is no relation between the claimant, David H. Mitchell, and myself; this was purely a business transaction between us.

Question 9. State whether you know of any other matter relative to the claim in question; and, if so, state it.

Answer. No, sir; I do not.

The said witness was then cross-examined by the special counsel for the United States and, in answer to interrogatories, testified as follows:

Cross-question 1. State the exact times you shipped corn to the quartermaster at Fort Harker, in the State of Kansas.

Answer. I can not give the days, for the reason, as I have stated, that my books and papers were burned up.

Cross-question 2. Can you state the month positively?

Answer. I think it was in December, 1868.

Cross-question 3. State who was the quartermaster at Fort Harker, Kansas, at that time.

Answer. I do not know his name. We always shipped to the quartermaster.

Cross-question 4. By what railroad did you ship this corn?

Answer. The Kansas Pacific.

Cross-question 5. Did you ship the corn in sacks or in bulk?

Answer. In sacks and shelled.

Cross-question 6. How many bushels in a sack?

Answer. As near as I can recollect there was 2½ bushels.

Cross-question 7. How many sacks to the car-load?

Answer. Don't remember.

Cross-question 8. Are you positive as to the number of car-loads you shipped?

Answer. No, sir; as I said before, I think there were seven or eight.

Cross-question 9. Might it not have been less than seven?

Answer. No, sir; I think that if it is anything it was more.

Cross-question 10. If the books of the Kansas Pacific Railroad showed that you had only shipped five car-loads, what would you say as to your memory being correct?

Answer. I think the books of the railroad company ought to show, but I think I am correct.

Cross-question 11. Where was this corn shipped from?

Answer. The most of it was shipped from Leavenworth. I think I shipped a couple of car loads from Fairmount, but as to this I am not positive.

Cross-question 12. How many did you ship from Leavenworth?

Answer. I think seven or eight.

Cross-question 13. Are you positive you shipped this amount from Leavenworth, Kans.?

Answer. No, sir, I am not; but this is correct to the best of my belief.

Cross-question 14. Do you rely entirely upon your memory in making this statement?

Answer. Yes, sir; I have nothing else to go by.

(The attorney for the claimant here states that as the attorney for the defendant has stated to the witness that the railroad statements show no corn shipped from Leavenworth by the witness, that the witness's reply to this statement is in answer to a question and should be here incorporated, which is as follows: I state positively that I did ship corn to quartermaster at Fort Harker, Kans.

Defendant objects to this statement of counsel as being improper, and should be brought out by him in rebuttal—not being an answer to any question by defendant's counsel.)

Cross-question 15. What did you say Mitchell paid you per bushel for this corn?

Answer. Well, as near as I can remember, it was 85 cents. It might have been 90.

Cross-question 16. Do you state this upon your own knowledge or upon information recently acquired from others?

Answer. It must have been from a message I received. I want it understood that this man I telegraphed to has nothing whatever to do with the case.

Cross-question 17. Isn't it a fact that you sold some of this corn to Mitchell, the claimant, for 60 cents per bushel?

Answer. I think not, sir. That was less than I could buy it for.

Cross-question 18. Are you positive you did not?

Answer. No, sir; I don't think I did. I am not positive of anything except that I shipped corn from Leavenworth.

Cross-question 19. How many bushels of corn did you ship to the quartermaster at Fort Harker, Kans., for the claimant, Mitchell, during the winter of 1868 and 1869? Give me the total number of bushels.

Answer. I don't know.

Cross-question 20. State the total amount of money paid to you by Mitchell for the corn shipped by you for him to the said quartermaster.

Answer. I don't know.

Cross-question 21. How long have you known the claimant, Mitchell?

Answer. About twenty-four years.

Cross-question 22. Do you know whether or not he has been convicted of fraud in presenting this claim for payment by the Government?

Answer. No, sir; I know nothing about it.

Cross-question 23. How long were you in the grain business in Leavenworth, Kans., and during what years?

Answer. I should judge it was about six months. That was in 1868 and 1869, to the best of my belief.

Cross-question 24. Did you ever ship any oats for the claimant during this time?

Answer. I don't think I did.

Cross-question 25. Might not some of these car-loads of grain you shipped have been oats—those you shipped to Mitchell?

Answer. I don't think they were.

Cross question 26. Was there at this time, and is there now, any friendship existing between you and the claimant?

Answer. Nothing but what may be called a "business friendship."

Cross-question 27. Have you not sent telegrams to get information in his behalf in support of this claim?

Answer. No, sir; not in his behalf.

Cross-question 28. Did you not telegraph to Leavenworth, Kans., yesterday to ascertain the price of corn there during 1868 and 1869, the time you were in the grain business there?

Answer. I telegraphed to ascertain the price of corn in 1868.

Cross-question 29. Do not you base the price (85 cents) to which you testified above upon the answer to your telegram?

Answer. I relied both upon my own recollection and the information in the telegram.

Cross-question 30. Could you have fixed the price at 85 cents without the information you got in the telegram?

Answer. I don't think I could.

Cross-question 31. Have you not employed counsel for the claimant in this examination?

Answer. Mr. Washabaugh, the clerk of the court, came to me and told me to get an attorney to ask these questions.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he does to state it, says that he does not.

JOHN A. GASTON.

Subscribed and sworn to before me, December 14, 1881.

FRANK J. WASHABAUGH,
United States Commissioner.

Deposition of J. H. Stringfellow, for claimant, taken at Saint Joseph, Mo.

Claimant appeared in his own behalf; defendants' counsel, Silas Woodson.

First general interrogatory by the notary public. Please state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is John H. Stringfellow; I am a physician; my age is sixty-two years; I have resided in the city of Saint Joseph, in the State of Missouri, during the past year; I have no interest, direct or indirect, in the claim which is the subject of this inquiry, and I am in no degree related to the claimant, D. H. Mitchell.

Being interrogated by D. H. MITCHELL, the claimant, for himself, the witness says:

Question 1 (by claimant). Where did you reside in the year 1876?

Answer. In the city of Atchison, in the State of Kansas.

Question 2. I'll get you to state if you was one of the jury at the April term of the United States district court held at the city of Topeka, in the State of Kansas, in the year 1876.

Answer. I was one of the petit jury of the United States district court at the city of Topeka, in the State of Kansas, at the April term of said court in the year 1876.

Question 3. I'll get you to state if you sat in the case as a juror in the case of the United States against D. H. Mitchell, which was tried at that term.

Answer. I did.

Question 4. What was the nature of the charge in that case?

Answer. Upon an indictment for presenting a fraudulent claim against the United States.

Question 5, 6. I'll ask the doctor to state, if he recollects, on what evidence the jury found the verdict of guilty against the defendant.

(Counsel for the United States objects to the witness answering the question because it is immaterial and irrelevant to any issue involved in the trial, that being a criminal case and this being a civil case.)

Answer. I do not recollect all the evidence that was introduced, but their verdict was based on testimony showing that the defendant had presented a claim for payment of certain corn which had previously been paid for by the Government.

Question 7. I'll get you to state if that verdict of the jury was on the evidence introduced from the books as kept by the Government at Fort Harker.

(Objected to on the part of counsel for the Government, because it is not competent for the witness to state what evidence is shown by the books kept by the Government, and because it is not competent for the witness to detail the whole or any part of the evidence given on the trial at Topeka, and because the question is leading.)

Answer. My verdict was based on the fact that it was shown in the testimony that the amount claimed in the voucher presented by Mitchell for payment had been previously paid for by the Government in another voucher taken up by the Government for the same identical grain, but it was not intended by that verdict to state that the Government was not indebted to the defendant, Mitchell, for an amount of grain greatly in excess of the amount asked for by the fraudulent voucher; and that it was proven, and not denied by the Government, that said Mitchell had delivered an amount of corn equal to nearly 400,000 pounds, for which he had received no payment from the Government.

(Counsel on the part of the Government objects to the answer to question 7, because it is not responsive to the question and states a great many irrelevant and immaterial matters.)

Question 8. You may state if the Government on that trial claimed to have paid on contract of November 9, 1868, for more than 400,666 pounds of corn.

(Objected to on part of counsel for the Government because incompetent and illegal.)

Answer. The Government only proved upon that trial payment to Mitchell for 400,666 pounds of corn under that contract.

Question 9. I'll get you to state what months in 1868 and 1869 that 400,666 pounds of corn was delivered to the Government.

Answer. It was in November and December, 1868, and January and February, 1869, to the best of my recollection.

Question 10. I'll get you to state if the evidence shown by D. H. Mitchell didn't show, during those same months of 1868 and 1869 a much larger amount than the books of the Government.

(Objected to by counsel for the Government because the question is leading, calls for hearsay evidence, and that which is wholly immaterial and irrelevant.)

Answer. It was proven to the satisfaction of the jury that during those months of November and December, 1868, and January and February, 1869, said Mitchell delivered to the Government at Fort Harker 792,000 pounds of corn, while the quartermaster's books at Fort Harker, which were in evidence, only showed a credit to Mitchell for the receipt of 400,666 pounds of corn.

Question 11. I'll get you to state if that amount included any corn delivered during the month of March, 1869.

Answer. My recollection is that it did not.

Question 12. I'll get you to state if the verdict of the jury was not for asking pay

for corn delivered on the same dates that it appeared had been paid for, and not that the jury decided the Government was not indebted to claimant for a large amount of grain furnished the Government.

(Objected to by counsel for the Government because it is leading and irrelevant, and because the witness has no right to explain or speak of the intention of the jury as indicated by their verdict.)

Answer. I will state, in answer to that question, that during President Grant's administration and subsequent to Mitchell's conviction, I made an affidavit, when the facts were all fresh in my memory, and I am of the same opinion still, that the verdict of that jury was for the reason that a demand was made upon the Government for payment the second time for grain already paid for by them, and not that he still did not have a valid claim against the Government for the amount of nearly 400,000 pounds still unpaid for by the Government and due said Mitchell. The affidavit referred to is printed on pages 82 and 83 of what purports to be the printed evidence in this case, and the proceedings therein, in the words and figures following, to wit:

THE STATE OF KANSAS, *Leavenworth County, ss:*

We, the undersigned, do hereby make oath, and do under oath say that we were jurors in the trial of the case of the United States against David H. Mitchell, tried before the district court of the United States for the district of Kansas for the April term, 1876; that it was shown in that case that the said David H. Mitchell had delivered under contract and orders from the proper military authority at Fort Harker, during the winter of 1868-'69, a large quantity of corn, for which there did not appear any evidence tending to show that 792,000 pounds of corn were delivered by Mr. Mitchell during said months of November and December, 1868, and January and February, 1869; and that there was no evidence produced on the trial of the payment of any amount over 400,666 pounds of corn; and the undersigned further say that the verdict in the case was based on the fact that the claim (for presenting and swearing to which Mitchell was indicted and tried) set forth the exact items for which he was previously paid, and which were included in the payment for the 400,666-pounds voucher or claim, and the verdict in this case was based on this fact, and not on any evidence that the Government had paid him for all the corn which the evidence showed that he had delivered to the United States at Fort Harker.

The undersigned further say that there was evidence admitted by the Government tending to prove that Mitchell delivered the entire amount hereinbefore specified, to wit, 792,000 pounds, the evidence showing payment for 400,666 pounds, and if the difference between these two amounts has not been paid for we believe, under the evidence, that Mitchell has yet a just claim for that amount. We desire to be understood plainly in our statements that the result of the trial came from the fact that the claim was for vouchers already paid, and not from the fact that the Government was not indebted to him, for we believe, as before stated, that the evidence shows the Government indebted to Mitchell for the difference between 792,000 pounds and 400,666 pounds, which would be 391,334 pounds, less 48,657, which was shown to have been paid in the oats contract and voucher. This would leave the net difference 342,677 pounds, and for this amount, to wit, 342,677 pounds of corn Mitchell has, according to the evidence, a valid claim against the Government. There was no evidence introduced on the trial tending to show any payment to Mitchell for this amount. Whether it has been paid or not the undersigned do not pretend to know or say; but if not paid, Mitchell, according to the evidence, is entitled to payment therefor. Again, we desire to say, to avoid misunderstanding, that the jury did not decide by their verdict that Mitchell had no just claim against the Government, but only that he was not entitled to payment for the items specified in his voucher, and for the presentation of which he had doubtless violated the law.

C. REASONER,
Foreman Jury.
JOHN H. STRINGFELLOW.

Subscribed in my presence and sworn to before me by C. Reasoner and John H. Stringfellow this 3d day of May, A. D. 1876.

[SEAL.] J. S. BERRY,
Notary Public.

(Counsel for the Government objects to the answer to question 12 because the evidence therein is illegal, incompetent, hearsay, and irrelevant.)

Question 13. Now I'll get you to state if you made an affidavit on the 9th day of December, 1876.

Answer. Yes.

Question 14. I'll get you to state the contents of that affidavit.

(Counsel for the Government objects to question 14 because it is illegal, irrelevant, and asking him to state the contents of a document that is not before him.)

Answer. The said affidavit is printed in what purports to be a copy of the printed evidence in this case on page 92, and is in the words and figures following, to wit, which I believe to be the exact language used by me in said affidavit:

STATE OF KANSAS, *Leavenworth County, ss:*

We, the undersigned, do make oath and say that we were jurors in the trial of the case of the United States against David H. Mitchell, tried before the district court of the United States for the district of Kansas, for the April term, 1876; that since the said trial we have read the papers duly certified to by Lot M. Morrill, Secretary of the Treasury of the United States, dated 27th day of July, 1876, with the seal attached, and say had the same been produced and read on the trial of said cause we would have given a different verdict, and we would have found the defendant not guilty. We give this statement freely and cheerfully, with a view that Mr. Mitchell may obtain Executive clemency from the President of the United States, which he is justly entitled to.

JOHN H. STRINGFELLOW, M. D.

Subscribed and sworn to before me this 9th day of December, A. D. 1876.
[SEAL.] PETER S. NOBLE,
Notary Public.

Question 15. I see here in your affidavit of November 9, 1876, you stated, after the trial, after seeing papers certified to by Lot M. Morrill, Secretary of the Treasury of the United States, dated July 27, 1876, with the seal attached, you state that had the same been produced on the day of the trial you would have given a different verdict, and found the defendant not guilty. I'll get you to state what there was in that certified paper, certified to by Morrill, Secretary of the Treasury, that caused you to change your opinion.

(Objected to by counsel for the Government because the evidence sought is illegal, is not applicable to any issue involved in this case, and is wholly irrelevant to the points at issue between the parties.)

Answer. I hardly know how to answer that question. I have not seen those papers from that day to this, and I can only suppose that the papers alluded to in that affidavit contained some facts in connection with the delivery of grain by Mitchell at Fort Harker that tended to show or did show that the voucher alleged to be fraudulent and upon which he was convicted was for a valid delivery of grain not accounted for by the quartermaster.

Question 16. After looking over all reports and telegrams from Major Inman to General Easton, chief quartermaster of the Department of the Mississippi, if you would give much credit to Henry Inman's private books of purchase that was introduced at trial as evidence.

(Objected to by counsel for the Government because it is uncertain and indefinite, and also irrelevant and incompetent evidence.)

Answer. I will answer by stating that at the trial, and subsequently from reading Major Inman's deposition touching this case, that during the time when this corn was being delivered, from November, 1868, to February, 1869, inclusive, the officers in charge of the Government depot at Fort Harker being changed very frequently, Major Inman being absent in the field with General Sheridan, the books were so loosely kept as to have been entirely unreliable as evidence, as was shown by the testimony in the case at the trial, and subsequently by Major Inman's affidavit.

Being cross-examined by SILAS WOODSON, counsel for the Government, the witness says:

(Not having time to complete the taking of the evidence, an account of the close of the day, the further taking of this deposition was continued to February 9, 1882, at nine o'clock a. m.)

[SEAL.] JOHN M. STEWART,
Notary Public.

FEBRUARY 9, 1882.

Met pursuant to adjournment. The cross-examination of John H. Stringfellow, witness, being commenced on the part of Silas Woodson, counsel for the Government, the witness says:

Question 1. State if the claimant, D. H. Mitchell, to your personal knowledge, ever delivered any corn or oats, in November and December, 1868, and January and February, 1869, for the benefit of the Army of the United States at Fort Harker or elsewhere.

Answer. I never saw any such delivery personally.

Question 2. In your deposition yesterday, upon your examination-in-chief, when you spoke of corn having been delivered by him, did you or not speak from information derived from others, and not from personal knowledge?

Answer. I spoke from facts testified to by witnesses in the case of the Government against Mitchell at the April term of the United States district court, held at Topeka in 1876, for presenting a fraudulent claim against the United States, I being one of the jurors in the case, and not from any personal knowledge that I had from the facts in the case.

Question 3. Were you at Fort Harker in the fall or winter of 1868, or winter or spring of 1869?

Answer. I was not.

Question 4. When you spoke yesterday in your examination-in-chief of the frequent change in officers in the United States Army at Fort Harker, and the manner in which the books were kept there by Acting Quartermaster Major Inman and others, did you speak from personal knowledge or information derived from others?

Answer. I spoke from the testimony of Major Inman himself and other employés of the Government at that post during said time given in the trial at Topeka, above referred to, and not from personal knowledge.

Question 5. Did you have any conversation with Major Inman, or any other officer stationed at Fort Harker, respecting the corn claimed to have been delivered by Mitchell to the Government at Fort Harker? If so, state when and where and what was said.

Answer. I never had any conversation with any officer of the Government in connection with this matter, unless it was as a juror when questioning the said persons upon the trial against said Mitchell. To the best of my recollection, I never spoke to any officer of the Government on this subject outside of the trial; all that I heard was in open court on the trial above referred to. And further this deponent saith not.

Second general interrogatory by the notary public. Do you know of any other matter relative to the claim in question? If so you do, state it.

Answer to second general interrogatory by the notary public. I do not.

JOHN H. STRINGFELLOW.

Subscribed and sworn to before me this 9th day of February, 1882.

[SEAL.] JOHN M. STEWART,
Notary Public.

Deposition of H. Wingfield, for claimant, taken at Lawrence, Kans., on the 27th day of January, A. D. 1882.

Claimant appeared on his own behalf; defendants' counsel, John Hutchins.

H. WINGFIELD, being duly sworn, deposes as follows:

Question 1. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest direct or indirect in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimant.

Answer. My name is O. H. Wingfield; my age is forty-four; occupation, a laborer; my place of residence is Williamstown, Kans.; I have no interest in this claim; I am not related in any degree to the claimant.

Being interrogated by claimant, witness says:

Question 2. State where you lived in the fall and spring and winter of 1868 and 1869.

Answer. I lived in Willamstown, Kans.

Question 3. State what you were engaged in at that time.

Answer. Shelling corn.

Question 4. For whom were you shelling corn?

Answer. For this claimant.

Question 5. What did you get per bushel for shelling corn that winter?

(Objected by defendant on the ground that it is immaterial and incompetent, not tending to prove the value of the corn.)

Answer. I shelled and loaded for 4½ cents per bushel.

Question 6. State, if you know, about how many sacks of corn were put in a car.

Answer. I think about 175 to the car.

Question 7. State about the average weight of the sacks.

Answer. We calculated to get in about 2½ bushels to the sack. I couldn't say whether I did or not, but that was what I got pay for.

Question 7½. To the best of your recollection, do you think the sacks would have averaged 2½ bushels to the sack?

(Objected to by counsel for defendant on the ground that the witness should be required to give his knowledge, and not what he thinks.)

Answer. I expect they would; I think so.

Question 8. I would ask you, Mr. Wingfield, if we did not weigh, to start out with, some of those sacks?

Answer. We did.

Question 9. I want you to state if I did not pay you about the average weight of the sacks that we weighed?

(Objected to by the counsel for defendant on the ground that the answer sought is immaterial and irrelevant.)

Answer. Well, I stated before I was paid for 2½ bushels to the sack.

Question 10. Did you get pay for about what the average weight of the sacks was that we weighed?

(Objected to by counsel for defendant as immaterial and irrelevant; it makes no difference what the witness was paid for his services. Such evidence is incompetent as even tending to prove either the quantity or value of the corn.)

Answer. Yes, sir; what sacks we weighed then averaged about 2½ bushels to the sack, and he afterward paid me at that rate.

Question 11. You may state what I paid for corn there that winter, if you know, per bushel.

(Objected to by defendants' counsel as immaterial and incompetent, the market value should be given, and not what the defendant paid.)

Answer. Well, from 75 to 77½ per bushel is what the men said they got.

Question 12. State if that was as cheap as corn could be bought at that time and place in any quantity.

(Objected to as immaterial and incompetent.)

Answer. That was what it was bought at at that place. I can say nothing more about the price.

Question 13. I would ask you if you did not see my clerks pay for corn up there that winter at the rate of from 75 cents to 77½ cents per bushel in the ear?

(Objected to by defendant's counsel: First, because it is a leading question; second, because it calls for immaterial and irrelevant testimony; third, because the testimony called for is incompetent to prove the value of corn, the actual market value should be given.)

Answer. I see them pay money for corn, they said, at the rates of 75 cents and 77½ cents per bushel.

Question 14. I see the papers reported corn sold in Lawrence during that winter of 1868 and '69 for less money than what I paid up there. State, if you know, whether there were any buyers for any quantity of corn buying corn in Lawrence during that time.

(Objected to by counsel for the defendant on the ground that the inquiry is wholly immaterial.)

Answer. I do not know whether there was or not.

Question 15. State, if you know, if a man had been here and was compelled to have a large amount of corn on short notice if he could have got it for any less than what it sold for at Williamstown?

(Objected to by counsel for defendant as immaterial and irrelevant; the evidence called for is incompetent, not tending to prove value.)

Answer. I wouldn't have supposed he could.

Being cross-examined by JOHN HUTCHINGS, on behalf of the United States, witness says:

Question 16. Where do you now reside?

Answer. Williamstown, Kans.

Question 17. How far is Williamstown from Lawrence?

Answer. Ten miles, I believe, from Lawrence.

Question 18. Have you resided in Williamstown ever since 1868 and '69?

Answer. No, sir; not all the time.

Question 19. What business were you engaged in in the winter of 1868 and '69 besides shelling corn for claimant?

Answer. I was working around at daily labor until I commenced that job.

Question 20. All the shelling you did was for the claimant, Mr. Mitchell, was it not?

(Objected to by claimant as immaterial whether he shelled for any one else or not.)

Answer. Yes, sir.

Question 21. How long were you shelling?

Answer. About four months; four or five months.

Question 22. All you know about what was paid for the corn was what Mr. Mitchell's clerks told you, was it not?

Answer. Well, what them and the men that sold told me.

Question 23. You had no other information except what you got from them?

Answer. No.

Question 24. You bought none of the corn, did you?

Answer. No, sir.
Question 25. How was the corn that was purchased there brought in?
Answer. Brought in by wagon in the ear.
Question 26. Was it bought by weight?
Answer. Yes, sir; it was weighed in the wagon.
Question 27. Do you know how many pounds were counted as a bushel of your own knowledge?
Answer. All I know is from what corn would weigh; they said they got so much per bushel, and weighed it.
Question 28. You don't know when they figured up the weight how many pounds were counted as a bushel, do you?
Answer. I never took any notice.
Question 29. You say that some of the sacks were weighed after they were filled with corn?
Answer. Yes, sir.
Question 30. Who weighed them?
Answer. Myself and one of the clerks.
Question 31. Who took the weight from the scale?
Answer. The clerk.
Question 32. How many sacks did you weigh?
Answer. Nine; three at a time.
Question 33. Were those all that you ever helped weigh out of the whole lot?
Answer. Yes, sir.
Question 34. Did you know of any others being weighed at that place?
Answer. No, sir.
Question 35. Who figured up the number of pounds in the weight of these nine sacks?
Answer. The clerk figured and I watched him.
Question 36. Did you keep any memorandum of the weight of those sacks?
Answer. I kept none no more than in my head, and shelled the balance accordingly.
Question 37. What do you mean by shelling the balance accordingly?
Answer. That I averaged the balance by what they weighed.
Question 38. Do you know where Fort Harker is?
(Objected to by claimant as immaterial.)
Answer. I have never been there; I have an idea where it is.
Question 39. What direction is it from Williamstown where you shelled the corn?
Answer. West; I suppose that was the way the trains was headed and went out.
Question 40. Is Fort Harker nearer to Williamstown than it is to Lawrence?
Answer. Yes, sir; about 10 miles.
Question 41. What railroad is Fort Harker on?
Answer. Kansas Pacific; now called the Union Pacific.
Question 42. Lawrence and Williamstown are both on the same road, are they not?
Answer. Yes, sir.
Question 43. You stated that you thought the number of sacks put in a car to be about 175. Did you keep any memorandum of the number of sacks loaded in each car?
Answer. I kept none, only in my head.
Question 44. Who helped load these cars?
Answer. Different ones I had hired.
Question 45. Did you hire the men to help load the corn?
Answer. Yes, sir.
Question 46. Did you always help load every car?
Answer. Yes, sir.
Question 47. How many men did you have hired?
Answer. I generally had about three men and a boy.
Question 48. Did they frequently load sacks into the car while you were doing something else?
Answer. No, sir.
Being interrogated by claimant, witness says:
Question 50. You stated that you and the clerk weighed 9 sacks of corn in the start. Do you think that those 9 sacks were a fair average of all the sacks that you shelled and shipped that winter to Fort Harker for claimant?
(Objected to by counsel for defendant as immaterial and incompetent.)
Answer. I think they were a fair average.
Question 51. You stated that you and the clerk weighed those 9 sacks, and the clerk figured the weight of them, and that you looked on and saw him figure the weight of the sacks. Did the clerk figure correctly?
After an adjournment of an hour the witness replied to the last above question.
(Objected to by defendant's counsel as immaterial.)
Answer. Yes, sir.
Question 52. The balance of the corn that you shelled and sacked that was consigned

to the quartermaster at Fort Harker would have averaged as much as the nine sacks that were weighed by you and the clerk, would it not?

(Objected to by defendant's attorney, because the question calls for mere opinion of the witness as to the weight of the corn; he has already stated that he did not weigh it.)

Answer. We supposed so, we took it that way, as I said before.

Question 53. I would ask you, then, if the sacks that were shipped after the weighing of the nine sacks were as large as the nine sacks that you weighed, and if they were as well filled as the nine sacks.

Answer. They were as large and as well filled.

Being recross-examined by JOHN HUTCHINGS for the United States, witness says:

Question 54. How do you know that the clerk figured up the weight of the nine sacks correctly?

Answer. I watched him figure.

Question 55. Did you figure it all over after him?

Answer. No, sir; I didn't take a pencil and figure.

Question 56. In what months was that corn principally brought in there?

Answer. I think they began to bring it in about November, and continued till the first of March.

Question 57. When was the most of it brought in?

Answer. I had all I could shell the most of the time; the largest portion was brought in the first two months.

Question by the officer. Do you know of any other matter relative to the claim in question?

Answer. No, sir.

his
O. H. + WINGFIELD.
mark

Witnessed by—
GEO. J. BARKER.

Subscribed and sworn to before me this 27th day of January, A. D. 1882.
[SEAL.] SOLON T. WILLIAMS,
Notary Public.

Deposition of George A. Ege, for claimant, taken at Topeka, Kans., on the 25th day of January, A. D. 1882.

Claimant appeared in his own behalf; defendant's counsel, Charles B. Smith.

GEORGE A. EGE, having been produced as a witness on behalf of the claimant, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, in relation to the said cause; and thereupon deposed and said that his name is George A. Ege; that his occupation is that of a clerk; that he is thirty-nine years of age; that his place of residence is Topeka, Kans.; that he has no interest, direct, or indirect in the claim which is the subjectof inquiry in said cause; and that he is not related to the claimant.

And thereupon the said George A. Ege was examined by the claimant, and in answer to interrogatories testified as follows:

Question 1. State, Mr. Ege, where you were during the winter of 1868 and '69, and the spring of 1869.

Answer. At Fort Harker, Kans.

Question 2. State what you were engaged in at Fort Harker during that time.

Answer. Agent for the Kansas Pacific Railroad.

Question 3. You may state what your duties were while you were there.

(Objected to by counsel for United States as incompetent, irrelevant, and immaterial.)

Answer. General duties of freight and ticket agent for the corporation.

Question 4. State if it was your duty to inform the officers at Fort Harker when there was a car-load of grain received there for the Government.

(Objected to by counsel for United States, same reason as above.)

Answer. It was.

Question 5. Did you so inform the officers when there was grain received?

(Objected to by counsel for United States, same reason as above.)

Answer. Yes, sir.

Question 6. You may state, Mr. Ege, if the officers of the Government did receive the grain received consigned to the quartermaster.

(Objected to by counsel for United States, same as above.)

Answer. They did.

Question 7. You may state, Mr. Ege, if you know, how many acting quartermasters there were at Fort Harker during the winter of 1868 and '69 and the spring of 1869.

Answer. I do not recollect.

Question 8. I would ask you, Mr. Ege, if you recollect if there were more than one?

Answer. There was.

Question 9. I will get you to state, if you know, in what manner the business was conducted on the part of the Government at Fort Harker during that time.

(Objected to by counsel for the United States as incompetent, irrelevant, and immaterial.)

Answer. I do, as far as the receipt and delivery of freight was concerned. Upon receipt of freight from the Government it was the rule of the company to notify the quartermaster, through his receiving and shipping clerk, of the arrival of such freight; the shipping clerk then received the freight on the part of the Government, and sent it to the destination ordered by the quartermaster; in some cases it was directed to the forage yard, and in others he would load it directly into wagons to be transported to distant posts or forts; in some cases the freight was not unloaded at Fort Harker, but would be reshipped to points west on the line of the road.

Question 10. I will get you to state if there was not teams sent to the cars and loaded up with grain to be sent to other points and not go to the forage yards to be weighed.

(Objected to by counsel for the United States as leading.)

Answer. My recollection is there was grain loaded for shipment by wagons to frontier posts without having been weighed at the forage yard.

Question 11. I would like you, Mr. Ege, to state in what manner the Government officials conducted their business at Fort Harker during the winter of 1868 and '69.

(Objected to by counsel for the United States as irrelevant, incompetent, and immaterial.)

Answer. I can not give a detailed statement.

Question 12. State, if you know from your knowledge, if the business was conducted in a proper or loose manner.

(Objected to by counsel for the United States for reasons as above.)

Answer. I should judge in a rather loose manner.

Question 13. I will ask you, Mr. Ege, if all the cars shipped to Fort Harker during the time you were there weighed exactly 18,000 pounds?

Answer. Eighteen thousand pounds was the usual billing weight, but in most all cases the actual weight was in excess of that weight.

Question 14. The bills show just so many sacks to the car. State if that represents the exact number of sacks in a car.

Answer. Not in all cases.

Question 15. State, Mr. Ege, if you know, how often the general freight office of the Union Pacific or the Kansas Pacific then has been moved up to the present time.

Answer. It has been moved twice; from Lawrence to Kansas City, and from Kansas City to Omaha.

General question. State if you know of any other matter relative to the claim in question; and, if you do, state it.

Answer. I do not.

GEO. A. EGE.

I, W. A. S. Bird, a notary public in and for Shawnee County, Kansas, certify that at the time and place aforesaid George A. Ege, a witness on behalf of the claimant in the above-entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to said cause, and that his answers were taken down in my presence and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and notarial seal this 25th day of January, A. D. 1882.

[SEAL.] W. A. S. BIRD,
Notary Public.

Deposition of Col. Henry Inman, for claimant, taken at Topeka, Kans., on the 5th day of December, A. D. 1881.

Claimant's counsel, A. B. Jetmore; defendant's counsel, R. A. Orbison.

HENRY INMAN, having been produced as a witness on behalf of the claimant, was by me duly sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, relative to the said cause; and thereupon deposed and said that his name is Henry Inman; that his occupation is that of a journalist;

that he is forty-four years of age; that his place of residence is Ellsworth, Kans.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the claimant. And thereupon the said Henry Inman was examined by the counsel for the claimant and, in answer to interrogatories, testified as follows:

Question 1. State what position you held on April 2, 1869, in the Army of the United States, and, if an officer, how long you held the office, and when it terminated.

Answer. I was captain and assistant quartermaster in the United States Army, and held said position from March, 1864. I was stationed at Fort Harker, Kans., and left there in May or June, 1869, I think.

Question 2. State when you went to Fort Harker.

Answer. I took charge at Fort Harker about September 15, 1867.

Question 3. State if you wrote a letter of date April 2, 1869 (a copy of which is marked Exhibit A and presented to witness), and made a part of this deposition.

Answer. To the best of my recollection, I did.

Question 4. State if you wrote letter of date April 19, 1869 (a copy of which is marked Exhibit B and presented to witness), and made a part of this deposition.

Answer. To the best of my recollection, I did.

Question 5. State if you wrote letter of date April 29, 1869 (a copy of which is marked Exhibit C and presented to witness), and made a part of this deposition.

Answer. To the best of my recollection, I did.

Question 6. State if you wrote letter of date April 17, 1869 (a copy of which is marked Exhibit D and presented to witness), and made a part of this deposition.

Answer. To the best of my recollection, I did.

Question 7. State if you were absent from the fort during the time so stationed there; and, if so, when and how long?

Answer. I was absent in the field with General Sheridan from about October 20, 1868, to about the 1st of April, 1869, in service against the hostile Indians.

Question 8. State whether or not during the time you were stationed at Fort Harker, D. H. Mitchell, the claimant, furnished the Government corn and oats, and if so, state all you know about the same.

Answer. D. H. Mitchell and others frequently furnished corn and oats as Government contractors. To the best of my recollection and belief, on the 9th day of November, 1868, and from a copy of my affidavit of date July 7, 1876, which is now before me, which I believe to be correct, the data for which were taken from the data in my purchase book, the said Mitchell entered into a contract to furnish the Government 16,000 bushels of oats at 87 cents per bushel, but as I was informed and believe—[Counsel of the United States objects to the witness giving any hearsay testimony]—the said Mitchell could not and did not, in consequence of the condition of the roads, furnish the oats as rapidly as the exigencies of the Government demanded. Therefore, Lieut. L. Wesley Cook, who was acting for me during my absence in the quartermaster's department, permitted said Mitchell to fill his oat contract with corn, and was to receive for pay the same rate per pound that he was getting for oats, and it appears from my purchase book that he did at the following dates, namely, December 31, 1868, January 21, 1869, February 27, 1869, 400,666 pounds of corn. The receipt for this delivery was given to Mr. Mitchell by Green Thompson, who was forage-master at Harker at the time, from which receipt a voucher was given to Mr. Mitchell for 352,009 pounds of corn. The balance of 48,657 pounds, which made up the aggregate of 400,666 pounds, was deducted, having been paid for, leaving a balance of 352,009 pounds, said Mitchell having been paid for said amount of 48,657 pounds by Captain Thomas, of Washington, as I am informed.

Question 9. When you speak of having been informed, in your last answer, as to the amount of corn furnished by claimant, state from whom you received that information.

Answer. From Lieutenant Cook, who acted for me, from the forage-master's report, from the chief clerk, from the reports of the shipping clerks, and from the reports of the clerks in charge of the property department.

Question 10. State whether or not you kept a purchase book, a private memorandum, in which you keep the receipt of grain of your department.

Answer. I did. What I mean by private book is one which was not required by the Government, as only the official blanks furnished by the various departments are the required official papers kept for the Government. This book, however, together with many other books, so-called private, was subject to inspection by the proper officers of the Government.

Question 11. State whether or not that purchase book was kept up for you during your absence, and if not, what you did on your return by way of perfecting the same?

Answer. I think it was not, but was made up after my return, from memoranda in the office which had aggregated in my absence.

Question 12. State whether or not that purchase book, of your own knowledge,

contained the deliveries of all the corn and oats furnished from time to time by the claimant to the Government in your department.

Answer. Substantially correct up to the time of my departure; after that I know nothing about it, positively.

Question 13. In your answer to your eighth question, you state that the claimant Mitchell furnished the Government in December, January, and February the aggregate amount of 400,666 pounds of corn; do you know from your own knowledge that is the total amount that the claimant furnished the Government on his contract of November 9, 1868.

Answer. I don't know; I don't know anything about it. I was not there.

Question 14. State what was the condition of the official papers in your department on your return to Fort Harker on the 1st of April, 1869, and how many officers were concerned in keeping the same in your absence.

Answer. They were partly made up and partly not. Three officers, I think, acted during my absence. Condition of papers was very much mixed; they were not kept as they should have been, and not as they would have been had I been at the post.

Question 15. State what was the condition of the accounts in your department on your return with reference to irregularities and negligence, and whether or not that they were satisfactorily regulated and arranged.

Answer. On my return I found that gross irregularities had obtained in my whole department, and negligence seemed to have been the rule. The papers were made up from memoranda in the office; I don't know whether they were positively correct or not, they were not satisfactory to me.

Question 16. State whether or not you know of any grain being on hand on your return or having been delivered in your absence to your department, the names of the deliverers unknown, and which had not been settled for by the Government.

Answer. I think there was—it was a large amount. I have an impression that it was.

[At this point the taking of this deposition was, by consent of the parties, adjourned, to be continued at 1.15 o'clock p. m. at the same place.]

Question 17. State if you were acquainted with Donald McIntosch in March, 1869; and, if so, state what official position he held, if any, at Fort Harker, Kansas.

Answer. He was lieutenant in the Seventh United States Cavalry, and acting for me as depot quartermaster at that date, having relieved Lieutenant Cook temporarily or permanently, I don't know which.

Question 18. Now, in a telegram of March, 1869, to General L. C. Easton, dated at Fort Harker, March 9, 1869, said McIntosch informed said Easton that the claimant Mitchell had shipped eight car-loads of oats and three of corn, and asking for information what he should do with the same, of which the following is a true copy, which is marked Exhibit E, and presented to the witness: State if any portion of the grain named in said telegram was included in the amount of corn furnished by said Mitchell of dates December the 31st, 1868, January 21, 1869, February 27, 1869, of a total amount 400,666 pounds of corn, was included in said amount.

Answer. I don't know—inferentially (which is only an opinion), based upon the fact that the telegram is dated subsequent to the alleged reception of the 400,666 pounds of corn, that it was not included in the same.

Question 19. State if the accounts in your department were correctly kept, and the date of that telegram is true; if any portion of the grain referred to in said telegram was included in the 400,666 pounds by you testified to.

Answer. If the accounts were correctly kept, and the 400,666 pounds of corn was received on the date specified, and the corn was received to which the telegram refers, it was not included in the 400,666 pounds.

Question 20. State if you were at Fort Harker on the 17th day of April, 1869.

Answer. I think I was.

Question 21. In speaking of the 400,666 pounds of corn having been delivered to the Government by the claimant, you stated that 48,657 pounds thereof was considered as oats and taken in lieu thereof; state if you have any personal knowledge of that fact.

Answer. I have none. I was absent when it is alleged to have occurred.

Question 22. I see from the report of R. Saxton, of date November 19, 1877, and the abstract filed therewith, that he finds from your report, for the month of January, 1869, that you credit the claimant Mitchell with 283,221 pounds of corn; now, state what was the true amount by you reported for said month.

(Objected to by counsel of United States, for the reason that the abstract referred to does not show the fact as stated in the question.)

Answer. From a paper which I hold in my hand, purporting to be voucher No. 14 to Abstract N to the property report for the month of January, 1869, there appears to have been 349,744 pounds of corn received from D. H. Mitchell, in lieu of oats, on a contract for the delivery of 16,000 bushels of oats.

(Instrument referred to by witness marked Exhibit F, and made a part of this deposition.)

General uses the following langu
Mr. Sprigg, that he would not h
is among these papers, had he kn
at the time of making said affida
been paid anything for it." Now
or otherwise, any such statement,
Answer. There appears to have
partment, at which I was not pres
ment and Mr. Sprigg. I did not n
subsequent time to Mr. Mitchell's
the same answer. I made the affid
had not been paid, whereas Mr. M
ceived payment, and then I stated
would not have made it.
Question 25. From your last answ
you mean that there is nothing due
grain furnished?
Answer. I do not say that; I do n
The said witness was then cross-ex
in answer to cross-interrogatories te
Cross-question 1. On what railroad
Answer. On the Kansas branch of
sas Pacific).
Cross-question 2. How far is it from
Answer. About 183 miles.
Cross-question 3. Prior to October
furnishing corn or oats at Fort Harke
Answer. I believe he had.
Cross-question 4. Were you acquain
if so, how long?
Answer. I presume I made his acqua
prior to that date.
Cross-question 5. From the time you
1869, were your relations with him frie
Answer. I presume they were, as wit
Cross-question 6. In your answer to q
you make your statement from your rec
7th of July, 1876, handed you by claima
Answer. Wholly from the said affidav
my affidavit, sworn to at said date, whi
from my books, provided said books we
predecessors and clerks at Fort Harker,
Cross-question 7. Had you personal kn
tenant Cook with claimant to take corn i
Answer. No absolute, positive, person
Cross-question 8. [illegible]

Cross-question 10. When forage was received and weighed by the forage master, would he not give the contractor or his agent a receipt for the amount so received?

Answer. Yes.

Cross-question 11. When you returned from the field on the 1st of April, 1869, had not books or papers been kept by the acting assistant quartermaster who had charge during your absence showing the amounts of forage received from contractors?

Answer. Yes; after a fashion.

Cross-question 12. While you were absent in the field were not the monthly reports and the abstracts accompanying them for December, 1868, January and February, 1869, made up by the clerks and acting assistant quartermasters in charge?

Answer. No, sir; for the reason that the operations in the field and the business transacted at the fort were but one series of papers; the whole five months' report were made up after I returned from the field.

Cross-question 13. In your affidavit of July 7, 1876, found on pages 86, 87, 88, 89, 90, 91, of papers received from the War Department, you have an extract copy, on page 89, of your purchase book; please look at this copy and state when the entries from December 31, 1868, to March 3, 1869, were made.

Answer. Some of the entries referred to in the said purchase book were made during my absence, and others after my return; in another sense this book, so far as its dates and entries are concerned, was filled from memoranda to complete the record.

Cross-question 14. Were the memoranda which you referred to the reports of the forage master?

Answer. They were made up principally, so far as Fort Harker was concerned, from the morning reports of the forage master, if I recollect aright.

Cross-question 15. What three officers acted as quartermaster during your absence?

Answer. Lieutenants Cook and McIntosh, of the Third Infantry and Seventh Cavalry, respectively, and Captain Rogers, military storekeeper, U. S. A., I think.

Cross-question 16. You have stated that a large amount of corn was received at Fort Harker without invoice, from parties unknown, and unsettled for by the Government. When was this corn received?

Answer. It must have been received during my absence.

Cross-question 17. If it was received during your absence, did you account for it on your monthly return?

Answer. It was so accounted for.

Cross-question 18. If it was so accounted for, upon what abstract did you take it up?

Answer. Abstract N.

Cross-question 19. If such corn was received, would it not appear on your abstract N from October, 1868, to April, 1869?

Answer. It should appear there if ever accounted for.

Cross-question 20. Look at abstract N, from December, 1868, found on page 58 of papers received from the War Department, and voucher No. 4, on page preceding, and state if that does not show a large amount of corn received without invoice and credited in the vouchers to contractors.

Answer. In this instance it does.

Cross-question 21. Look at abstract N, for January, 1869, found on page 60 of papers received from the War Department, and voucher No. 4, on page preceding, and state if that does not show a large amount of corn received without invoice and credited in the voucher to claimant.

Answer. Yes, sir; to a larger amount than the other.

Cross-question 22. When was abstract N, for January, 1869, made up by you?

Answer. My judgment is that it was made up after April 1, 1869.

Cross-question 23. Look at abstract N, for February, 1869, on the page following that of January, 1869, and state when that abstract was made by you.

Answer. My judgment is that it was made after April 1, 1869.

Cross-question 24. Were the abstracts for those two months and the other months while you were in the field made up at the same time?

Answer. In refreshing my memory from papers handed to me as true copies, I think I am certain they were.

Cross-question 25. Look at copy of voucher No. 12, on page 91, annexed to your affidavit, July 7, 1876, and state whether or not you gave the original voucher to claimant; if so, when?

Answer. I did, and after April 1, 1869.

Cross-question 26. Where did you get the number of pounds of corn from, with the dates of purchase?

Answer. From my purchase book, based upon returns from the forage master, or receipts certified to by the forage master to the contractor.

Cross-question 27. Look at your abstracts N, for December, 1868, January and February, 1869, above referred to, and state how much corn is shown by them to have been delivered by claimant.

Answer. Three hundred and forty-nine thousand seven hundred and forty-four pounds.

Cross-question 28. How many pounds of corn did you give him credit with in your voucher for December, 1868, and January and February, 1869?

Answer. Three hundred and fifty-two thousand and nine pounds.

Cross-question 29. Can you account for the discrepancy between the 352,009 pounds, as contained in the voucher, and 349,744 pounds, as shown by abstract N, for January, 1869?

Answer. I can not now, except it may be a clerical error.

Cross-question 30. Look at the copy of extract from your purchase book, on page 89, annexed to copy of your affidavit of July 7, 1876, and state what corn, as is shown to have been received therein, was certified to Mitchell in voucher on page 91.

Answer. December 30, 41,870 pounds; January 30, 331,878 pounds, less 48,657 pounds used to fill out oat contract of November 9, making 283,221 pounds; February 27, 1869, 26,918 pounds.

At this point the taking of this deposition was, by consent of the parties, adjourned, to be continued at 7 o'clock p. m., at the same place.

Cross-question 31. Please explain the entry in your purchase book of January, 1869 D. H. Mitchell, 331,878 pounds of corn, less 48,657 pounds used to fill out contract of November 9; and why was the 48,657 pounds deducted?

Answer. Because it appears from the copy of what purports to be the official record of the controversy of Mitchell's claim that this 48,657 pounds had been paid for as oats by General Easton, all of which transaction, so far as the oats and corn is concerned, based upon the statement of Lieutenant Cook that he permitted Mr. Mitchell to turn in corn in lieu of oats.

Cross-question 32. At the time you gave claimant the voucher for the 352,009 pounds of corn, after April 1, 1869, did he claim that there was any amount due him for corn delivered which was not included in that voucher?

Answer. My recollection is that he was not perfectly satisfied at that time, but was not persistent in claiming a large amount until a long time after.

(Question and answer objected to by counsel for claimant as irrelevant and incompetent to cross-examination.)

Cross-question 33. At the time you gave that voucher did claimant produce receipts of the forage master showing that he had delivered more corn than the amount for which the voucher was given?

(Objected to by counsel for claimant as being incompetent and irrelevant to cross-examination.)

Answer. My impression is that he did not, because it would have been my duty to investigate it then and there. My impression is that he did not.

(Objected to by counsel for claimant to all that portion of the answer after the word "duty" in the answer, because it is not germane to the question.)

Cross-question 34. While you were stationed at Fort Harker, was it not customary for claimant, when he had contracts for forage, to ship to that point more forage than was necessary to fill his various contracts?

Answer. I can't say that it was a custom, but it was done several times by Mr. Mitchell and other contractors.

Cross-question 35. Did he ever ship corn to Fort Harker which you refused to receive?

Answer. There was a case of that kind once, but I don't know whether it was Mr. Mitchell or somebody else.

Cross-question 36. Did he not, on his contract of November 30, 1867, ship upwards of 100,000 pounds of corn in excess of his contract, a part of which was afterward transferred by him to Mr. H. L. Newman?

(Objected to by counsel for claimant as incompetent and irrelevant as cross-examination.)

Answer. It appears from what purports to be a copy of a letter written by myself to General Easton, dated April 26, 1869, that he did ship to Fort Harker upwards of 100,000 pounds of corn in excess of his contract; but a part of this was transferred by Mitchell to Newman, and at the commencement of Indian hostilities had stored at Fort Harker subject to his order, 54,776 pounds.

Cross-question 37. Was this 54,776 pounds of corn afterwards received from Mitchell and paid for?

(Objected to by counsel for claimant as incompetent and irrelevant cross-examination.)

Answer. It appears from what purports to be a record of the case that it was, and I now remember that it was received.

Cross-question 38. Had not this corn been lying at Fort Harker a long time prior to its reception by you?

(Same objection by claimant as above.)

Answer. About four months, if I recollect aright.

Cross-question 39. Look at a copy of a certified copy of your purchase book, pages 119, 120, and 121 of papers received from the War Department, and state what was the date of the purchase of the 54,776 pounds of corn.

(Objected to by counsel for claimant same as above.)

Answer. It appears to have been some time in December, 1868, but purchase book shows no date.

Cross-question 40. Did you give claimant a voucher for this corn?

(Objected to by claimant's counsel same as above.)

Answer. From the record it appears that I did.

Cross-question 41. Does it appear from the record that in the voucher which you gave for this corn another amount was included; if so, what additional amount was included?

(Objected to by claimant for the reasons as given above.)

Answer. Yes; 28,970 pounds.

Cross-question 42. Look at copy of certified copy of purchase book referred to above and state whether it shows a receipt of this 28,970 pounds; if so, what is the date of the purchase?

(Objected to by claimant as above.)

Answer. The copy purports a receipt; it does not appear from what purports to be a copy of a certified copy of the purchase book that there is any date noted; but upon what purports to be a certified copy of the voucher it is dated December 1, 1868.

Cross-question 43. Did the claimant get you to make an affidavit in support of his claim before the War Department on the 29th day of December, 1874?

Answer. I can't recollect the date, but I made such an affidavit for him.

Cross-question 44. Look at pages 25 and 28 of papers received from the War Department and state whether or not that is a copy of an affidavit made by you at that time.

(Objected to by claimant because of reasons above stated.)

Answer. It seems to be a correct copy as near as I can recollect.

Cross-question 45. State how you happened to make that affidavit.

(Objected to for reasons as above.)

Answer. Because Mr. Mitchell told me he had not been paid the amount that was due him for grain delivered at Fort Harker.

Cross-question 46. Had he told you that Captain Thomas had paid him on the 12th of January, 1870, $8,943.44 for 400,666 pounds of corn, or 7,154$\frac{13}{56}$ bushels, for corn accounted for on your property returns made while stationed at Fort Harker, would you have made that affidavit?

Answer. He told me that the Government had not paid him for grain delivered at Fort Harker, and upon that belief I gave him that affidavit. If I had known that Mr. Mitchell had already received the amount contemplated in the voucher to which my affidavit specifically refers, I would not have given him that affidavit.

Cross-question 46½. Did you give claimant another affidavit on the 7th of July, 1876?

Answer Yes.

Cross-question 47. Look at pages 86, 87, and 88 of papers received from the War Department, and state whether or not that is a copy of your affidavit.

Answer. I have stated that it appears to be correct.

Cross-question 48. In that affidavit you state that abstract M of one of your monthly reports of the spring of 1869 shows a large amount of corn paid out by the Government, and received from some person unknown to you; what is your recollection as to the time when that corn was received?

Answer. If received at all, it was received while I was in the field, prior to April 1, 1869. The facts stated in that affidavit are based purely upon my recollection, not having any written data of the same in my possession.

Cross-question 49. After your return from the field, on April 1, 1869, did you not prepare your monthly reports, with the abstracts accompanying them, from October, 1868, up to April 1, 1869, from data and memoranda kept by your clerks, and the acting assistant quartermasters who were in charge during your absence?

Answer. Yes; and also from data of operations in the field?

Cross-question 50. Will not the abstracts accompanying your reports from October, 1868 to April 1, 1869, show all the facts in relation to the receipt of forage of which you are cognizant of at the time they were made?

Answer. They do, or rather they should.

Cross-question 51. You have stated in your affidavit of July 7, 1876, the large amount of corn received of some person unknown would probably be found on your abstract N, for the month of April, 1869. If it should appear upon examination of that abstract that only 20,000 pounds were taken up during that month, would you, or not, say that your recollection was at fault when you made that affidavit?

Answer. If that should turn out to be the case, it would show that the error of

recollection was a grievous one, and the premises upon which my memory was based were wrong, unless the fact should appear on some other abstract; then it would be an error of date.

Cross-question 52. Do not the copies of abstracts N, for December, 1868, and January, 1869, show large amounts of corn received which are explained by the accompanying vouchers?

(Objected to by claimant's counsel as incompetent and irrelevant as a cross-examination and a repetition.)

Answer. Yes, sir; they do.

Cross-question 53. May not these abstracts contain the amounts of corn which you stated in your affidavits would probably be found on the abstract N, for April, 1869?

(Objected to for same reason as above.)

Answer. Within the domain of possibility, yes; but to probability, in my opinion, no.

Cross-question 54. From the fact that in making up your abstracts N, for December, 1868, January and February, 1869, that you returned the 349,744 pounds of corn in your abstract N, for January, while a copy of your purchase book shows that this amount was received during the months of December, January, and February, does it not seem probable that all corn received from Mitchell after December 1st, while you were in the field, was accounted for on the abstract N, for January?

Answer. I admit its possibility, but can not conscientiously say positively, without access and reference to my purchase book, or a true copy of the same, including all the periods covered by the time under discussion.

At this point the taking of this deposition was, by consent of the parties, adjourned to be continued at 9 o'clock a. m., on December 6, at the same place.

Deposition of Henry Inman resumed according to adjournment, at the time and place fixed, the same parties present as aforesaid.

Cross-question 55. State why the price of the corn was not inserted in the voucher given by you to claimant for the 352,009 pounds of corn?

Answer. Because the price was in controversy between myself and General Easton. As I had no authority to pay it, it was left an open question for those who did.

And thereupon said Henry Inman was re-examined by counsel for claimant.

Redirect question 1. In your answer to your tenth interrogatory on cross-examination you were asked the question by counsel "if the forage master did not give a receipt to contractors for forage furnished." Now, state if you have any knowledge of receipts given to Mr. Mitchell for the grain he furnished the Government.

Answer. It is impossible at this late date to state positively from personal knowledge all the little details in the routine of the business. I do now recollect that he did.

Redirect question 2. State if you know of your own knowledge of any receipts having been given to Mr. Mitchell for grain furnished by him to the Government during your absence in the field.

Answer. I am in utter ignorance of details of that character during my absence.

Redirect question 3. In your answer to the eleventh interrogatory on your cross-examination you were asked by counsel if you did not find on your return on the 1st of April, 1869, that books and papers had been kept during your absence showing amounts of forage received from contractors, and your answer was "Yes, after a fashion." Now, what do you mean by after a fashion?

Answer. I mean loosely, irregularly, and not with that discriminating care I should have exercised myself.

Redirect question 4. In your affidavit of date 7th day of July, 1876, you state that your accounts were kept so negligently and such irregularities occurred during your absence as to make it impossible for you ever to get them straightened up in any satisfactory manner, and that you could not then tell anywhere near how they do stand; that it is quite possible that said Mitchell may have furnished large amounts of corn that do not appear in said purchase book; that the memoranda and reports of the receipts of which, with weights, may have been lost or misplaced; and that you did not think said purchase book is entitled to credit as being proof that said Mitchell furnished no more corn than the amount therein shown. Now, state if that is still your opinion of the facts in the premises.

Answer. So far as possibility is implied in the question, I am of the same opinion, but it applies to other contractors as well as to Mr. Mitchell.

Redirect question 5. What do you say as to the irregularities in the accounts kept and in the purchase-book above referred to?

Answer. In this particular my opinion has not been changed one iota.

Redirect question 6. In your answers to interrogatories 13 and 14 on your cross-examination you stated that your purchase-book was made up from memoranda, which memoranda were made up from forage masters' report. Now, state if said reports constituted a part of the accounts and proceedings kept in your absence, referred to above in my question 4.

Answer. Yes; the whole time of my absence was included.

Redirect question 7. In your answer to interrogatory 26 in your cross-examination

you said, voucher No. 12, on page 91 of the papers of the War Department, that you gave the original to the claimant. Now, state what personal knowledge, if any, you have of the fact.

Answer. My memory of the occurrence at this time, the facts having been brought to my notice at the time of my first affidavit, and still further fortified by what purport to be true copies of the papers in the transaction in the records in this examination, are positive proof to my mind, as near as anything may be, and that my personal knowledge is complete.

Redirect question 8. State, as nearly as you can, the date that you issued said voucher No. 12, and whether it was so issued after April, 1869.

Answer. I can not state the date at all; but it was after April, 1869; in fact, after October 19, 1869.

Redirect question 9. In said voucher you recite, "purchased on contract November 9, 1868." State what you mean by that recitation, and whether there was a contract for corn of that date by Mitchell.

Answer. It was for corn received; while, in fact, said corn was delivered in lieu of oats, on a contract dated November 9, 1868, having been authorized by L. W. Cook, who acted for me in my absence.

Redirect question 10. Was said Mitchell present at the time, or did you send to him said voucher No. 12?

Answer. I sent it to him by mail.

Redirect question 11. In your answer to question 32 of your cross-examination, in referring to said voucher No. 12, in speaking of the claims of Mitchell against the Government, you said: "My recollection is that he was not perfectly satisfied at that time, but was not persistent in claiming a larger amount until a long time after." State what explanation you have to give of that answer.

Answer. When I answered that interrogatory yesterday I was strongly under the impression that the vouchers had been delivered to Mr. Mitchell before my departure from Harker, which was effected a few weeks after my return from the field, but to-day, in examining the record from the War Department, I find conclusively that the vouchers were not delivered to Mr. Mitchell until some six month after the date first impressed upon my mind; and at the date of the delivery of said voucher, and previous thereto, Mr. Mitchell became persistent for a larger amount than the voucher called for.

Redirect question 12. In your answer to question No. 55 of your cross-examination you say the reason you did not insert the price for the corn in said voucher No. 12, that there was a controversy between General Easton and yourself with reference to the price to be paid therefor; state the nature of that controversy.

Answer. It grew out of the fact that General Easton would not admit the legitimacy of the substitution of the corn for oats.

Redirect question 13. State whether or not said corn to be substituted for said oats pound for pound the Government would have suffered any injury or loss.

Answer. No injury whatever, in my judgment.

Redirect question 14. State how long you had served or been connected with the Quartermaster's Department of the Army.

Answer. At that time, more or less on duty in the Quartermaster's Department for fifteen years.

Redirect question 15. State whether or not this was the only instance where corn was taken in lieu of oats on contracts of this kind.

Answer. This was not an isolated instance; it had been done before and probably since.

Redirect question 16. From your examination of the abstract of the papers from the War Department, state whether or not, from the best of your judgment and belief, they contain full and complete copy of your purchase-book by you made up covering the time in which the claimant had been delivering grain to the department under your charge.

Answer. They do not.

Redirect question 17. State whether these abstracts, as submitted to you from the War Department, contained the record of any grain furnished by unknown parties, and not accounted for by the Government.

Answer. They do not, as a whole.

Redirect question 18. In your affidavit you state that you were present at the trial of the United States against David H. Mitchell at Topeka in April, 1876, and heard all the evidence in the case, and that after hearing the evidence and ascertaining the number of cars shipped by David H. Mitchell to said Harker during said time, and having thought the matter over since that, you were of the opinion that said Mitchell did furnish a large amount more of corn than the 400,666 pounds; now state what you have to state about that fact now.

(Objected to by counsel of the United States on the ground that counsel is asking for an opinion of witness.)

Answer. If at the present moment the same evidence in relation to this matter were presented to me as it was at that time and to the jury by the defense on that trial, without any controversion, I should be inclined to admit the possibility of the alleged fact.

Redirect question 19. In said affidavit you state that in your reports for the spring of 1869 there is shown a large amount of corn that was fed out by the Government and received from some person unknown to you; that you could not state the exact amount; that at the time you could not tell to whom it belonged, but that you had good reason to believe that it may have belonged to said Mitchell; the amount as you then remembered it was from $600,000 to $900,000 worth. Now, sir, state what you have to say about said facts.

Answer. At the time I made the affidavit under consideration, I was fully impressed from memory that the statements contained therein were true, and that my papers or records, upon examination, would bear out this statement; but upon reviewing the copies of the records from Washington I am staggered, because there is a paper contained therein that comports with my statements only partially, but destroys the main fact. The paper I refer to is voucher No. 4 to abstract N, of December, 1868. I am compelled, therefore, to state that this paper may have been true. The one upon which I based my belief, or that there may still exist a paper, not shown here, that does carry out the fact, and only an examination of the whole record will determine the truth of the matter.

At this point the taking of this deposition was, by consent of the parties, adjourned to meet at 1.30 o'clock p. m. at the same place.

Deposition of Henry Inman resumed according to adjournment at the time and place fixed; the same parties present as aforesaid.

The said witness was then recross-examined by counsel for the United States, and, in answer to interrogatories, testified as follows:

Recross-question 1. You stated in your affidavit July 7, 1876, that a forged receipt was given to claimant by Green Thompson, forage master at Fort Harker, for 400,666 pounds of corn delivered in December, 1868, and January and February, 1869. State whether or not that is a fact of your own knowledge.

Answer. I think I can state positively that it is.

Recross-question 2. Was not the voucher for the 352,009 made out by you in April, 1869?

Answer. Yes, sir; to the best of my recollection it was.

Recross-question 3. How do you know that it was made out in April, 1869?

Answer. My memory is refreshed by what purports to be a letter written by myself to General Easton, containing the fact embodied in the question.

Recross-question 4. What is the date of that letter?

Answer. April 17, 1869.

Recross-question 5. In that letter, what do you call the voucher?

Answer. "My certified account in duplicate No. 44."

Recross-question 6. Did you ever show claimant that voucher prior to leaving Fort Harker in the summer of 1869?

Answer. Of course. I can not state positively, but have no doubt that he did.

(Objected to by claimant's counsel as the opinion of witness.)

Recross-question 7. If claimant had furnished more than 400,666 pounds of corn during your absence in the field, would you not have reported the fact to General Easton on April 2, 1869, when you informed him of the receipt of the above amount?

(Objected to by counsel for claimant because the same is not relevant to recross-examination and is repetition.)

Answer. I can not state positively that I should have done so in that particular letter, because it was the custom to confine letters to one subject; this has only reference to November 9, 1868, but I think I should have done so in another.

Recross-question 8. Do you not know that at that time that claimant had no other contract for furnishing forage at Fort Harker, except that of November 9, for furnishing oats?

(Objected to by counsel for claimant for the reasons above given.)

Answer. I think the record will sustain that fact so far as the date of April 2 is concerned.

Recross-question 9. Do you say that it would not be a loss to the Government to pay the same price per pound for corn as for oats, making the cost of corn per bushel $1.52 when corn could be bought for $1.25?

Answer. As a question of simple mathematics it would, but when the practical results of an important Indian war is at stake money value does not enter as a factor. As a question of utility, it was better in the field than oats would have been for horses, in my judgment.

Question. Do you know of any other matter relative to the claim in question? and, if so, state it.

Answer. No. HENRY INMAN.

Deposition of Sidney Clarke, for claimant, taken at Topeka, Kans., on the 5th day of December, A. D. 1881.

Claimant's counsel, A. B. Jutmore; defendant's counsel, R. A. Orbison.

The witness deposed that his name is Sidney Clarke; that his occupation is that of a lawyer; that he is forty-nine years of age; that his place of residence is Lawrence, Kans.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the claimant.

And thereupon the said Sidney Clarke was examined by the counsel for the claimant, and, in answer to interrogatories, testified as follows:

Question 1. State if you were present in Washington, D. C., in January, 1870, when the claimant, Mitchell, received payment from the Government for grain furnished at Fort Harker; and, if so, what did you do in the premises by way of securing said payment?

Answer. I was a member of Congress from Kansas in 1870. Some time in the latter part of December, 1869, or 1st of January, 1870, Mr. Mitchell came to Washington and called upon me, and asked me to assist him in collecting a claim which he held against the Government for supplying forage or grain at Fort Harker. He said to me in substance that some difference had arisen between the officers at the fort and General Easton in regard to prompt payment for the forage supplied, and that, as he was engaged in filling his various contracts he then had with the Government, he needed the money to carry out his obligations.

After consulting about the matter I went with him to the Secretary of War, and presented in his behalf a letter, of which the following is a copy:

UNITED STATES SENATE CHAMBER,
Washington, D. C., Jan. 6th, 1870

TO THE SEC'Y OF WAR:

In behalf of one of my constituents, Mr. D. H. Mitchell, of Leavenworth, Kansas, I have the honor to submit the following statement of facts, and to ask for your decision thereon: On the 19th of November, 1868, he made a contract with Gen'l B. C. Card, acting chief Q. M. at Fort Leavenworth, to furnish at Fort Harker 16,000 bushels of oats, as per contract herewith enclosed, marked A. After the delivery of about 111,000 lbs. of oats, the acting quartermaster at Fort Harker, Lt. Cook, signified his willingness to receive corn in lieu of oats on the aforesaid contract, and did receive 400,666 lbs., as shown by the receipt of the forage master, herewith enclosed, marked B, which was used by the Government at that post, and accounted for, as shown by letter of Quartermaster-General, marked C. The understanding with Lt. Cook was that he should receive the same number of lbs. of corn in lieu of the same number of lbs. of oats, and he did so. This would make the price of the corn $1.52¼ cents per bushel, which Mr. Mitchell now claims. It will be seen by a contract of the same date (marked D) that he was receiving $1.69 cents per bushel for corn delivered at Fort Hayes, which is seventeen and one-quarter (17¼) cents more than the price claimed for the corn delivered at Harker, with only about 16 cents difference in the freight per bushel.

There is no question about the delivery of this corn, the number of pounds, and its use to the Government,

Mr. Mitchell asks to be paid $1.52¼ cents for the corn. Gen'l Easton offered to pay $1.27 cents per bushel, which is much less than the cost of the same. I think Mr. Mitchell's claim is right, and I ask that you direct that he be paid. He has waited for his money for about one year, with loss of interest, while there is no complaint against him as a contractor, having furnished many supplies to the Government for the last five years. I earnestly urge prompt action in this case.

Respectfully, yours,

SIDNEY CLARKE, M. C.,
Kansas.

W. A. S. BIRD.

The Secretary took the matter under immediate consideration; referred the letter to the proper officers, and in the course of a few days the claim was paid in part, the rate being fixed at $1.25 per bushel for the corn.

Question 2. State what occurred at the time between yourself and the Secretary of War with reference to the price per bushel to be paid and any other forage furnished the Government by said Mitchell.

Answer. My recollection is that there was a question about the price of said corn per bushel. I find by referring to my letter, now before me, that Mr. Mitchell claimed $1.52¼ per bushel, and that General Easton offered to pay $1.27 per bushel. We discussed this question of price with the Secretary, and in the payment of the claim the

The witness was then cross-ex
answer to interrogatories, testifie
Cross-question 1. At the time
evidence was presented by Mr. M
Answer. I have no very distin
th nk they are all referred to in
tion.
Cross-question 2. Look at certif
29, 1869, indorsed B, found on pa
state whether or not that is a cop
sented to the Secretary of War wi
Answer. As the voucher of po
number of pounds for which Mr. I
copy of the receipt of the forage n
Cross-question 3. At the time y
the claimant show you a voucher g
of corn delivered by claimant duri
February, 1869, to said Inman?
Answer. I have no recollection
impossible for me to recollect the
Cross-question 4. If he did show
6th day of July, 1870, to Secretary
Answer. I have no recollection o
lief is that all the papers I presen
letter making application above se
General question. Do you know
tion? and, if so, state it.
Answer. No.

STATE OF KANSAS,
County of Shawnee, ss:

I, W. A. S. Bird, a notary public i
certify that at the times and place
nesses on behalf of the claimant in
fore any question was put to them,
the truth, relative to the said cause
were taken down by me, and the d
read over by them and signed by th
In witness whereof I have here
December, A. D. 1881.
[SEAL.]

at this post is insufficient to enable me to return to Mr. Mitchell the full amount delivered by him, I respectfully request instructions in the matter.

If it is concluded to keep the corn remaining, please notify me of the rate per bushel to be allowed Mr. Mitchell in settlement of the same.

Very respectfully, your ob't serv't,

HENRY INMAN,
Bvt. Maj. & A. Q. M., U. S. A., Depot Q'rm'r.

EXHIBIT B.

OFFICE ASS'T Q'RM'R,
Fort Harker, Kansas, April 19, 1869.

Bvt. Maj. General L. C. EASTON,
Chief Q'rm'r Dept. Mo., Fort Leavenworth, Kansas:

GENERAL: Referring to your communication of the 13th inst., I have the honor to state that the 400,666 lbs. corn delivered at this point by Mr. Mitchell was all consumed during my absence in the field; that Mr. H. L. Newman has delivered here 382,000 lbs. corn, of which quantity 236,280 lbs. remain now on hand and might be turned over to Mr. Mitchell in part payment, leaving 164,386 lbs. to be paid for in cash; but as there is a constant demand for corn at this post, I would respectfully suggest that the entire quantity delivered by Mr. Mitchell be purchased at market rates prevalent at date of delivery.

I am, general, your ob't serv't,

HENRY INMAN,
Bt. Major & A. Q. M., U. S. A.

H. 527, '69.
(Indorsed:) E. No. 669. Bk. 82, R 156.

EXHIBIT C.

OFFICE ASS'T Q'RM'R,
Fort Harker, Ka's, April 29, 1869.

Bvt. Maj. Gen. L. C. EASTON,
Chief Q'rm'r Dep. Mo., Fort Leavenworth, K's:

GENERAL: Referring to your communication of 15th inst., I have the honor to state that the forage master at this post reports that the corn received from Mr. Mitchell in lieu of oats (contract Nov. 9) was entirely consumed by the public animals fed here during my absence. I enclose his certificate to that effect.

I am, general, very respectfully, your ob't serv't,

HENRY INMAN,
Bvt. Maj. & A. Q. M., U. S. A.

L. B. I., 232, 1 enclo.

(Indorsed:) C. 11, Jan'y, '70, 8. 1403. Q'rm'r Gen's Office. Received July 5, 1876. Mk. 13, W. 2417; Uk. 13, W. 1458. 124-1023.

EXHIBIT D.

OFFICE ASS'T QUARTERMASTER,
Fort Harker, K's, April 17, 1869.

Bt. Maj. Gen'l. L. C. EASTON,
Chief Q'rm'r Dept. Mo.:

GENERAL: I have the honor to transmit herewith my certified account in duplicate No. 44, in favor of Mr. D. H. Mitchell for the amount of corn delivered at this depot, viz, 400,666 lbs., as reported by my communication of April 2.

Please notify me of the price you may conclude to allow Mr. M., so that I may properly enter the transaction on my books.

Very respectfully, &c.,

HENRY INMAN,
Bt. Major & A. Q. M., U. S. A.

(Indorsed:) 11940. Filed May 15, 1878. With 51-1403 (Q. M. G. O.), 1876. 464 (Q. M. G. O.), 1875.

EXHIBIT E.

[Telegram.]

FORT HARKER, *March 9th*, 1869.

To Gen'l L. C. EASTON:

Mitchell has shipped eight (8) car-loads of oats and three (3) of corn.
He has no contract here that I am aware of.
Shall I receive it?

DONALD MCINTOSH,
Lt. & A. D. Q. M.

U. 129, '69.

(Indorsed:) E. No. 669, B'k 82, R. 156.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 122.

ISAAC CLARK.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 2769.]

The committee to whom was referred House bill No. 2769, granting a pension to Isaac Clark, would report:

That the said beneficiary was the father of Charles H. Clark, who was a private in Company A, Eighth New York Heavy Artillery, who died June 27, 1864, from gunshot wounds in the right shoulder, received in action at the siege of Petersburgh, Va.; that he died leaving no wife or child, and that his mother died in 1881; that said beneficiary applied to the Pension Bureau for a pension as the dependent father of said Charles, but said application was rejected June 12, 1884, on the ground that the claimant was not dependent upon the soldier for support at the time of his death.

The evidence shows that whatever the fact may have been at that time, the beneficiary is now an old man, about eighty years of age, broken down in health, with no property, and for over five years has been an inmate of the poor-house of Orleans County, N. Y., where he has been and is supported as a pauper.

Your committee, believing this to be a just bill, would recommend its passage.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 123.

EDWIN S. FURMAN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2770.]

The committee to whom House bill No. 2770 was referred make the following report:

That Edwin S. Furman, the beneficiary, was the father of George F. Furman who enlisted and was mustered in as a private in Company C, Fourth New York Heavy Artillery, August 14, 1862. That he was captured at Ream's Station August 25, 1864, forwarded from Richmond to Salisbury, N. C., October 9, 1864, admitted to hospital at that place January 30, 1865, and died in said hospital January 31, 1865, of pneumonia. That he died leaving no wife or child or children or descendant of any child or children. That said George at the time of his enlistment was attending school and under the age of twenty years, and was at that time and previous y thereto had been supported and was being educated by his father. That after his said enlistment, and before being taken prisoner, he sent home money to his father, and was always a dutiful and affectionate son. That the mother of said George has been dead for several years, never having received any pension. That at the time of the enlistment of said George, said beneficiary had no property except his household furniture, a small library and horse and carriage, but was actively engaged in his profession as a minister of the Methodist Episcopal Church, supporting himself and his family from his salary, and that for this reason he has never applied for a pension under the pension laws, not being able to show himself dependent upon his son at the time of his death.

That at the present time, said beneficiary is seventy-five years of age, broken down in health, and that he was actively engaged in his profession as a minister for over fifty years. That in consequence of his age and physical infirmities, he was placed upon the superannuated list of ministers in the fall of 1888, and is now totally incapable of supporting himself by his manual labor or practicing his profession. That all the property he now has is a house and lot, containing about 50 square rods of land, worth not over $350 over and above incumbrances, his household furniture, and a small library, and a note upon which there is now due and unpaid the sum of $225, and that he has no other means of support except such uncertain sums as he may receive from his conference as such superannuated minister. That he has no child living, your committee believing this to be a very meritorious bill, would recommend that it do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 124.

MARY A. WOOD.

February 15, 1890.—Committed to the Committee of the Whole House and ordered be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

(To accompany bill H. R. 6825.)

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6825) granting a pension to Mary A. Wood, submit the following report:

Mary A. Wood is the only surviving child of Marcus A. Wood, late a corporal in Company I, First Regiment New York Dragoons Volunteers.

That said Marcus enlisted in said company August 12, 1862, and died in the hospital at Fredericksburgh, Va., May 10, 1864, from wounds received in battle May 7, 1864, leaving surviving him his widow, Milissa Wood and the beneficiary, his only child, who was born November 25, 1862.

That subsequently a pension was granted to his widow which was cut off by her subsequent marriage to one George E. White. That a pension was also granted to or on account of the beneficiary of $2 per month, which terminated November 24, 1878, when she became sixteen years of age, and that now no one is receiving a pension on account of the said Marcus Wood.

The evidence shows clearly that the said Mary, born while her father was in the Army, was a cripple from her birth and has ever since continued so; that she has never been able to work or to do anything without assistance; that her mind is weak; that she has no property and is entirely dependent for support upon her mother, who is a poor woman; that her only property consists of a house and lot assessed at $575, and personal property not exceeding in value the sum of $200; that her stepfather, who is under no legal obligation to support her, has no property.

Dr. Hill, the physician who has known and treated the said Mary for the past fifteen years, in his affidavit describes her condition as follows:

> That the said Mary A. Wood is a victim of congenital spinal disease, the effect of which has nearly or quite destroyed the functional action of the entire nervous system—almost completely atrophysing the muscular structure in the lower extremities, thereby rendering the said lower extremities nearly or quite useless. Her mental faculties are likewise impaired, so that were her other functions normal, she would still be unable to support or care for herself. She has ever been unable to in any manner wait upon herself except to feed herself when seated at the table, and by no human power could her condition be improved, nature having failed to complete and perfect her organic structure.

The committee believe that this poor unfortunate woman, now over twenty-eight years, the only child of a brave soldier who lost his life in the service of his country, is deserving of the relief demanded, and would recommend that the bill do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 125.

ALONZO ALDEN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5516.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5516) to increase the pension of Alonzo Alden, submit the following report:

The beneficiary was colonel of the Thirty-fifth Regiment New York Volunteers. He was a very brave soldier. In 1865 he was granted a pension of $30 per month. This was increased to $50 in 1887, and at the last Congress that was increased to $72 by a special act.

The report made in that case at the last Congress is hereto made a part hereof.

The committee believes that this soldier is in a terrible condition, his suffering intense; that the future holds out no hope of relief, and that granting the relief he asks for is but simple justice, and they would therefore recommend that the bill do pass.

[House Report No. 284, Fiftieth Congress, first session.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2663) for the relief of Alonzo Alden, submit the following report:

That Alonzo Alden, the soldier, enlisted in the United States service April 18, 1861, as a private in the Thirtieth Regiment New York Volunteers May 14, 1861, was made second lieutenant, and June 10, 1862, was made first lieutenant and regimental adjutant; September 27 1862, transferred to the One hundred and sixty-ninth Regiment New York Volunteers and commissioned as major; made lieutenant-colonel March 2, 1864, and colonel June 1, 1864.

That while major he was wounded at Edenton road by a fragment of shell, which entirely disabled him for a short period.

It appears from the petition and evidence on file in the Pension Office, that at the battle of Cold Harbor, June 1, 1864, Alden was shot by a rebel sharp-shooter, the bullet striking the right side of his neck at the base of his head, passing into his neck diagonally, cutting off the lower portion of his right ear, reaching the neighborhood of the spine at the base of the brain, where it still remains. That at the taking of Fort Fisher and the explosion of the enemy's magazine which there occurred, Alden was thrown about 30 feet against a traverse and a mass of timber and sand fell upon him, fracturing his right thigh and otherwise injuring him and bruising his body, which rendered him unconscious for nearly five weeks. That Alden was mustered out of the service August 6 1865, holding the rank of colonel and brigadier-general by brevet.

That July 19, 1865, he was granted a pension at the rate of $30 per month and afterwards increased to $50 per month, commencing June 22, 1887.

Alden can not receive $72 per month for the reason that the act of June 16, 1880, granting the same, is confined by its express terms to persons then receiving $50 per

month. So that the highest rate which the soldier could receive when his pension was raised to $50 per month as aforesaid, was the sum of $50 per month allowed him. All the evidence on the application was very clear, convincing, and consistent, conclusively showing that he would have been entitled to the sum of $72 per month if the Pension Bureau could have allowed it under the law.

We quote but from one affidavit, that of R. B. Bontecon, M. D., a resident of the city of Troy, of forty years' standing in his profession, serving as surgeon in the field from 1861 until the close of the war, brevetted colonel by President Lincoln for distinguished services as a surgeon, for twenty years past assistant surgeon at the Watervliet Arsenal, and now in the practice of his profession in the city of Troy aforesaid, and now and for years past a member of the board of examining surgeons appointed by the Government to examine applicants for pension, who states, in his affidavit of December 14, 1887, that he "knew Alonzo Alden before enlistment and has lived in the same city with him and met him daily, and would have known if he was unsound before enlistment, which he was not; have known and seen him almost daily, when he was at home, for the last twenty-two years, and know from seeing him daily and from examining him professionally that he has been crippled since his return from the war, partially in his leg, and more especially in his head and spine—the result of a gunshot wound, the ball entering just in front of the right mastoid process and lodging deeply near the base of the brain, where it is still concealed, and giving rise to cerebro-spinal meningitis, so that he can not use his arms or his legs for any manual labor, nor can he transact business on account of the pain and constant irritation caused thereby.

"That I have seen him in several of these paroxysms of acute mania resulting from said gunshot wound, and he is obliged to be under restraint to prevent him from dashing his brains out and inflicting bodily harm on himself, so great is his agony at times. That I have been in constant daily attendance upon him from May 7, 1887, to June 20, 1887, and during that time prescribed powerful medicines, and blistered his back repeatedly, and at last introduced a seton into his neck, which he still wears. He is unable to dress or undress, or to turn over in bed without assistance, and therefore requires the constant attendance of one or more persons. When he has paroxysms of acute mania, as he frequently does, he requires the constant attendance of several persons to restrain him from doing himself bodily harm. He is wholly disabled for any labor or employment, and this deponent further says that the location of the ball above mentioned is such that to attempt to remove it would greatly endanger General Alden's life, and would probably produce his death; that in the opinion of this deponent no prudent surgeon would dare to undertake the operation; and that in the opinion of this deponent no essential improvement in the patient's condition will ever occur."

The examining board of surgeons in their report to the Pension Bureau, dated June 22, 1887, state as follows:

"One of the members of this board has been in attendance on him for several months past, has seen him daily, and knows that he suffers constantly with pain in his head and spine; that he has frequent violent paroxysms of delirium and acute mania, requiring force to control him, apparently due to cerebro-spinal irritation. We believe that this condition of his nervous system is due to the gunshot wound of head, and that he is totally unfit for any occupation, and requires the constant attendance of some person to assist him in dressing, and at table to prepare his food, as he is unable to cut it or dress himself."

The committee, after considering all the evidence in the case, are of the opinion that it is a very just and meritorious case, and recommend the passage of the bill as amended, and that the bill be amended by striking out the words "one hundred," in the seventh line thereof, and inserting in lieu thereof the words "seventy-two."

O

51st Congress, 1st Session. | HOUSE OF REPRESENTATIVES. | Report No. 126.

WILLIAM H. BRIMMER.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 3636.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3636) granting a pension to William H. Brimmer, submit the following report:

The beneficiary in this case was a member of Company K, Twenty-first New York Cavalry.

In the Fiftieth Congress a bill was introduced placing him upon the pension roll. After this in order to comply with the requirements of this committee be filed his claim at the Pension Office, and the same was rejected on account of his inability to furnish the evidence required. This action was not unexpected.

In this case in the last Congress a favorable report, which is hereto annexed and made a part hereof, was made and the bill passed both branches of Congress, but failed to become a law, not receiving the signature of the President.

Your committee believe it to be a meritorious case, clearly shown, would recommend that the bill do pass.

[House Report No. 906, Fiftieth Congress, first session.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5247) granting a pension to William H. Brimmer, submit the following report:

That the soldier, William H. Brimmer, enlisted in Company K, Twenty-first New York Cavalry, September 5, 1864, and was discharged May 30, 1865, by general order.

In his affidavit he states that at the time of his enlistment he was a sound, robust, and healthy man, and able to perform any kind of manual labor. On his enlistment he was examined and received after said examination. That while in the service, and while at Cumberland Gap, he was detailed with others to carry sacks of corn delivered at regimental headquarters to his company; that this carrying caused a weakness in his bowels, accompanied with much pain, which has since continued, progressing until it has developed into hernia.

That he was not treated while in the service, although the difficulty and pain continued.

That he was not aware of the hernia until afterwards.

That he was treated for this difficulty by Dr. Dickinson, who died in January, 1878; that afterwards he was treated by Dr. Charles N. Reynolds, who pronounced it a case of hernia, not then fully developed.

That his application for a pension has been rejected at the Pension Office for the reason that he has been unable to furnish the evidence as to origin of disability, as required by the rules of that office.

Dr. Charles N. Reynolds testifies that he is a physician, and has known the soldier for about ten years. He further says:

"Some time in the year 1880 or 1881 William H. Brimmer consulted me about a trouble with his side and groin, complaining of great pains and tenderness in the right groin, spreading from thence over more or less of the right side; shooting pains into the back, followed by weakness, trembling, and faintness, and occasionally nausea, the attacks coming on very suddenly and at any time, necessitating his sitting or lying down wherever he might be at the time. On examination I came to the conclusion that Mr. Brimmer was suffering from an incomplete oblique inguinal hernia. Mr. Brimmer seemed somewhat to doubt the conclusion, saying the symptoms he now presented were the same he had experienced while in the Army, and at intervals ever since, the only difference, if any, being in point of severity and frequency. But the correctness of the diagnosis was fully demonstrated in two or three months by a protrusion of the sac through the external ring. Mr. Brimmer is obliged to wear a truss all of the time, and has been since it first came down. For the seven or eight years past it has entirely prevented his following his work of turning or standing at the saw."

Lawrence Luvey states in his affidavit that he was a private in Company E, in the same regiment to which Brimmer belonged; that he was well acquainted with him before his enlistment. That he was then "a strong, healthy man, and free from any rupture." That they were often required to carry large sacks of corn from the regimental headquarters to the company headquarters. That since his (affiant's) discharge in 1865 he has lived near Brimmer and seen him about every day; that when he first came home in 1865 Brimmer was complaining of a weakness in his right groin, and at times when he (affiant) was at work for firm to which Brimmer belonged, he (Brimmer) would be obliged to stop work and lie down and rest until the pain would somewhat cease, and that Brimmer at that time said he had had this same difficulty about him since they were compelled to carry corn at Cumberland Gap.

Ezra B. Chase testifies that he has been a partner in business with Brimmer since April 1866, and worked with him most of the time, and describes the existence of this difficulty from that time ever since, its growing worse, and resultining in the wearing of a truss.

The wife of Brimmer, who was married to him before his enlistment, testifies that before his enlistment he was a sound, healthy man, free from any rupture; that on his return from the Army he complained of soreness and weakness in his right groin, rendering him at times unable to do anything; that this continued growing worse until it developed into an open rupture and rendered a truss necessary.

The high character of Brimmer is certified by the member of Congress introducing the bill.

The evidence satisfies the committee that the hernia which the soldier now has had its origin in the line of duty while in the Army, and although he may be unable to furnish the evidence required by the rules and practice of the Pension Office he is entitled to relief, and therefore recommend that the bill do pass with the following amendment:

Strike out all after the word "volunteers" in the eighth line thereof.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 127.

ABBIE D. JOHNSON.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4420.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4420) granting a pension to Abbie D. Johnson, have considered the same and report:

Charles J. Johnson, the deceased husband of claimant, enlisted as a private August 31, 1862; was promoted to second lieutenant February 2, 1864; he was severely wounded in the right hand at Cold Harbor June 3, 1864, the ball severing the index finger of that hand and wounding the other three fingers. He was mustered in as first lieutenant, Company C, same regiment, October 15, 1864. In the spring of 1865 he was the acting provost marshal of the brigade. At Fair Oaks, Va., October 27, 1864, he was wounded in the head.

He was honorably discharged May 14, 1865. He was again commissioned second lieutenant, Fifteenth United States Infantry, May 11, 1866, was promoted first lieutenant August 15, 1867, and resigned January 14, 1869.

The soldier drew pension for the wound of hand; he did not draw pension for wound of head. He committed suicide on 26th of March, 1885, by shooting himself in the head. For some years before his death he showed marked symptoms of insanity, and ever since he was wounded in the head, as shown by the testimony, he complained of a peculiar sensation in the head which he described as a feeling of the "hair rising out of his head." He was also sun-struck while in his second service, which affected his head and eyes ever after. He was melancholy for the last few years of his life, and met difficulties which surrounded him with none of his former mental vigor. He was always a man of temperate habits and good morals. He was for a time sheriff of his county.

Edward D. Van Slyck, a prominent citizen of Hamilton, N. Y., testifies that he was an intimate acquaintance of soldier for ten years prior to his death; that he complained of acute pain in his head near the top of his scalp, and attributed the same to a gunshot wound of his head he received in service, and the last few years of his life he manifested frequent insane tendencies.

Dr. F. D. Beebe, ex-surgeon for the Pension Bureau, testified before the special examiner that he knew husband of claimant from long be-

fore enlistment in the service; that he treated him for intermittent fever during the war.

I examined him biennially and found he had a scalp wound about one inch in length near the temple. I cannot say which side. My recollection is there was an indenture. I said to him, "This ought to be put into your examination." He said, "No; that don't trouble me, except I have a little headache." He complained of his head frequently, and was obstinate in his manner. The last year he was partly insane.

There seems to have been no exciting cause for the insanity except the wound of head. After signs of insanity appeared, financial embarrassments and losses came on.

Your committee are of the opinion that the benefit of the doubt should be given in this case to the claimant and the claim allowed. The passage of the bill is recommended.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 128.

HORACE B. LEWIS.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4421.]

The Committee on Invalid Pensions, to whom was referred House bill 4421, have considered the same and report:

The claimant served as a private in Company A, One hundred and twenty-first Regiment New York Volunteer Infantry. At the battle of Salem Church, May 3, 1863, he received a gunshot wound of the face, which entirely destroyed the right eye and lodged in the roof of the mouth. He has been pensioned for the same (and resulting affection of left eye) since discharge. Some time after his discharge the left eye began to be impaired through sympathy with the injured condition of the face and right eye.

On August 27, 1886, at Oneida, N. Y., while claimant was attempting to work at his trade as a carpenter, a nail flew from under the hammer and struck his left eye upon the ball of that eye, injuring the same; that shortly afterwards the sight of that eye also left him, leaving him perfectly blind.

Medical testimony in the case shows that prior to said accident the said left eye was weak and diseased from the effect of the wound of service, and that had not such condition existed the injury from the nail would not necessarily have caused the loss of sight of said eye. Dr. Henry W. Carpenter, a very reputable physician, certifies that claimant would shortly have been blind from the diseased condition of the left eye had he not been hit therein by a nail in the spring of 1886.

The claimant is totally blind and in destitute circumstances, with a family of small children.

Your committee are of the opinion that as this man was almost blind when injured, and would shortly have been so from the wound of face incurred in service, that the injury of the left eye from the force of the nail should be excluded, and the rating allowed him that his condition would have warranted in a short time under the general law. The nail would probably never have hit his eye, had not his impaired vision rendered it necessary for him to hold his head in close proximity to his work.

The passage of the bill is recommended.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 129.

JANE REYNOLDS.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SAWYER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6328.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6328) granting a pension to Jane Reynolds, submit the following report:

Jane Reynolds is the widow of Roger Reynolds, who served as private in Company A, Twenty-sixth Regiment New York Volunteers, from May 1, 1862, to December 13, 1863, and in Company C, Fourteenth Regiment New York Artillery, from December 15, 1863, to August 5, 1865. He was a pensioner for gunshot wound of right leg and rheumatism, and died August 5, 1889, of congestion of the brain. The widow's claim has been rejected on the ground that the soldier's fatal disease is not shown to be chargeable to his military service.

In addition to the disabilities for which pensioned the soldier is shown to have received considerable treatment for diarrhea and indigestion while in service. Although no claim for disability therefrom was filed by him, yet it is evident from the medical examination in the case that he must have suffered more or less from the effects of said diseases until death. The examination in 1886 shows senitiveness over liver and spleen, tongue coated white, hemorrhoidal vessels congested, senistiveness over right and left side of chest and spine.

He became utterly unable to provide for himself and family and was compelled to seek refuge at the Soldiers' Home at Bath, N. Y., where he died as heretofore stated.

The widow is sixty-five years of age, unable to work, and without means of support. Her only son is insane, an inmate of the poor-house.

The soldier's long services and consequent disabilities, as well as the dependent condition of his widow, should entitle her to the relief asked for.

Your committee therefore report favorably on the accompanying bill and ask that it do pass, amended, however, by striking out all after the words "company" in line 6, and insert therein instead the words "A, Twenty-sixth New York Infantry, and Company C, Fourteenth New York Artillery."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 130.

NELSON G. EDWARDS.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3381.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3381) for restoration to the pension rolls of Nelson G. Edwards, submit the following report:

Nelson G. Edwards served as private in Company B, One hundred and seventy-ninth Regiment New York Volunteers, from August 31, 1864, to June 8, 1865. He was pensioned in 1871 for chronic inflammation of brain and spinal cord, the result of overexertion and heat at the battle of Poplar Springs Church, Va., September 30, 1864. He was dropped from the pension roll May 28, 1877, on the ground that a special examination then had tended to show that the disability was the result of dissipation prior to enlistment and since discharge. A large amount of evidence was subsequently filed disproving these charges, and another special examination was had in 1888, which resulted in re-affirming the former action in dropping the pensioner's name on the ground that soldier had sick spells before service, believed to be due to inebriation.

The reports of the special examiners are too voluminous to go into details, but a careful examination of the same clearly shows that the adverse testimony, which, however, is anything but conclusive, is the outcome of some church trouble in which the soldier was mixed up. The testimony favorable to the claimant far outweighs that of an adverse character. From it it is shown that while the claimant was not a total abstainer from the use of intoxicants, he drank at moderation. He was, however, of a nervous temperament, and consequently became easily excited. He was of industrious habits, and in no way disabled from the performance of manual labor prior to his enlistment. Fresh from the regular every-day walks of life, he was suddenly exposed to a severe day's march in a hot sun, followed by the excitement of a fierce battle in which the command became engaged on the following day; these exposures followed by nervous prostration, from which claimant has suffered ever since, as is clearly shown by all the evidence on file. The surgeons who have examined soldier give it as their opinion that his present disability is the result of sun-stroke.

The soldier's right to a pension having been once conceded, nothing short of the most positive evidence should cut him off. Your committee are of opinion that the adverse evidence obtained by special examination is not of that character, and believing that the relief asked for should be granted, return the bill with the recommendation that it do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 131.

HENRIETTA L. ARLIN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5030.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5030) granting a pension to Henrietta L. Arlin, submit the following report:

The proposed beneficiary is the widow of the late Capt. William H. Arlin, of Company K, Second New York Veteran Cavalry. Captain Arlin also served as private in Company C, Second United States Artillery, from March 21, 1848, to August 31, 1848, when discharged upon certificate of disability, and as sergeant of first-named command from July 16, 1863, to November 10, 1863, when promoted to captain. He died of general debility July 29, 1882. The widow's claim has been rejected on the ground that the soldier's death had no connection with his military service.

It appears from an examination of the papers in the case that the soldier filed a claim for pension April 27, 1854, alleging injury to back about June 5, 1848, while assisting in taking water into the hold of the ship *Russia*.

This claim was rejected because he was unable to furnish the necessary proof in support of his allegation, the record showing treatment for dysentery only, which was the disability on account of which he was discharged.

In 1873 he filed another application for pension, alleging injury to spine, breast, and left side from fall of his horse while on picket duty in April, 1864. This claim was rejected because of the allegations made in 1854 relative to a similar injury while on the ship *Russia* in 1848, and the further reason that an examining surgeon failed to discover any disability from alleged causes. In support of his claim for injuries received in the late war, the soldier filed the affidavit of the major of his regiment, who states that he saw Arlin very soon after being thrown from his horse, appeared much injured through his back, and was unable to walk. There is other evidence also on that point. The assistant surgeon testifies that Arlin was sound at entry into service in 1863; that at or near Campti Station, La., about March 25, 1864, while on picket duty, he had his back injured by his horse falling on him; his spine was so concussed that he became partially paralyzed, and could only walk with the aid of crutches. He never completely recovered the use of his lower extremities, and can not stoop without falling down.

Captain Arlin tendered his resignation, which was accepted April 15, 1864, on account of disabilities.

Dr. M. R. Babcock testifies to treatment for disease of dorsal and lumbar region of spinal column from October, 1864, to February, 1867.

Dr. Peck, examining surgeon, also treated soldier more or less for same disability until death. There is an abundance of lay testimony showing the steady decline of the soldier's health. The records of the town of Queensburgh, N. Y., give the cause of his death as debility from injuries received in the Army.

The evidence furnished in this case connecting the soldier's death with his service during the war of the rebellion would undoubtedly have secured favorable action at the Pension Office were it not for the allegations made by him in 1854. These allegations, however, are not substantiated and should not prejudice the rights of the widow in her claim for pension based upon causes chargeable to a latter service.

The claim appears to be satisfactorily established, and your committee therefore report favorably on the accompanying bill and ask that it do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 132.

DELIA W. MARSHALL.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4855.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4855) granting a pension to Delia W. Marshall, have had the same under consideration, and beg leave to submit the following report:

The facts in the case are fully set forth in the report of the Committee on Invalid Pensions, Fiftieth Congress, which your committee adopts as its own, and likewise recommend the passage of the bill.

The report is as follows:

The claimant is the widow of George A. Marshall, who served as private of Company F, Second Regiment Vermont Volunteers, from August 1, 1863, to January 12 1865, when discharged upon surgeon's certificate of disability because of loss of tissue gastrocnemius muscle, adhesion of muscles, and contraction of tendons of right leg from gangrene subsequent to gunshot wound received in battle May 10, 1864, near Spottsylvania.

The widow's claim has been rejected by the Pension Bureau on the ground that the soldier's fatal disease of heart was not chargeable to his military service.

Soldier was a pensioner for the disability incurred in the service. The several medical examinations, covering the entire period from his discharge to death, show that the right leg was constantly covered with open ulcers, causing much suffering and loss of sleep. His whole system became debilitated, and gradually the heart became affected.

Dr. E. M. Lyon, secretary of board of examining surgeons at Plattsburgh, N. Y., states that he became acquainted with Marshall in 1865, and knows that he was a constant sufferer from ulcerated varicose veins and wound of right leg. His general health was very poor, his symptoms indicating blood-poisoning. Was not able to perform any manual labor for some years previous to his death. Affiant was called to see soldier on the night of his death, but he was dead when he reached the house. Post-mortem examination disclosed the fact that soldier's death was due to obstructed circulation at mitral valves, and consequent failure of heart's action. From affiant's knowledge of the soldier's condition from discharge to death, it is his opinion that the disease of heart existed for a long time, possibly since he suffered from gangrene in the hospital.

In the opinion of your committee the connection between the death cause and the service is clearly established by the medical evidence referred to, and therefore they report favorably on the accompanying bill, and ask that it pass.

O

POOR ORIGINAL

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 133.

LUCY R. OLMSTEAD.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SAWYER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 3382.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3382) granting a pension to Lucy R. Olmstead, submit the following report:

Lucy R. Olmstead is the widow of Montgomery Olmstead, who enlisted July 16, 1861, for three years as private in Company E, Fifteenth Massachusetts Volunteer Infantry, and was discharged November 15, 1862, on account of gunshot wound of right foot received in action at Bull Run August 30, 1862, and myopia. Her claim for pension has been rejected on the ground that soldier's death, September 19, 1875, from disease of lungs and angina pectoris, is not shown to be chargeable to his military service.

It is shown by the record that soldier was also treated for general debility prior to discharge, which condition continued until the following July, when it became necessary to place him in the insane asylum at Somerville, Mass., where he was under treatment until April, 1864, when discharged, apparently having recovered.

The superintendent of said asylum, in letter to soldier's family, dated August 24, 1863, says:

> Your son's disease is a severe form of mania, and whatever may have been his predisposition to mental trouble, there can be no doubt but that his exposure to sun and weather, his privations, his long and protracted marches, and the whole army life of the Fifteenth Regiment, of which I have quite an intimate knowledge, stand to his present disorder in the relation of an existing cause.

The evidence further shows that the recovery from this mental disturbance was only temporary. After engaging in business his mind again became affected, and on February 11, 1875, he was admitted to the Boston Lunatic Hospital. The record of admission shows that "there is no known hereditary predisposition in the case. Patient has various delusions, but is quiet and has at no time been violent." In the course of treatment he was, under proper guard, permitted to take boat rides, and while thus execising, on September 8, 1875, jumped overboard, as shown by the records of the hospital, from which exposure he contracted pneumonia, from the effects of which he died September 19, 1875.

In the opinion of your committee this soldier's death cause is clearly shown to be at least indirectly chargeable to his military service. The insanity following so closely upon his discharge for disability, without any hereditary predisposition, can reasonably sure be attributed to the hardships and exposure incident to the long and existing campaign during which he served. That death followed an exposure during such insanity is likewise established.

The committee, believing the case meritiorous, report favorably on the accompanying bill and ask that it do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 134.

THOMAS KELLY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4984.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4984) granting a pension to Thomas Kelly, submit the following report:

Thomas Kelly was enrolled January 9, 1864, at Sullivan, N. Y., as private in Company H, Second Regiment New York Heavy Artillery, and discharged on surgeon's certificate of disability April 7, 1864, because of over age. His claim for pension on account of catarrh and partial deafness of both ears has been rejected by the Pension Bureau because the evidence is not deemed sufficient to show origin of alleged disabilities in service.

The case has been specially examined. That claimant was free from said disabilities at time of enlistment is clearly shown by the report of the special examiner. Soldier while on the way to the front, or shortly after his arrival at Fort Corcoran, Va., took a severe cold, for which he received treatment from the regimental surgeon for about two weeks, when upon an examination by a medical board, he was discharged, as heretofore stated, with others who had joined the command with him.

The only two comrades now living who were acquainted with claimant during service know that he was ailing after their arrival at Fort Corcoran, but are, after the lapse of time, unable to make any definite statement as to the character of his ailments. The evidence as to claimant's condition at discharge and since is more satisfactory.

Claimant's family physician remembers treating him shortly after return from service for diarrhea and general nervous debility, which treatment continued pretty much the whole summer. Also treated him the following year for malarial poisoning. He also testifies that while under such treatment soldier complained of catarrh and roaring in his head, which affection has followed him ever since.

Neighbors also testify that claimant's hearing was impaired at return from service and gradually has grown worse.

The claimant as well as his witness bear a good reputation.

Medical examination shows claimant disabled in a pensionable degree from alleged causes. He is now seventy years of age and poor.

While the evidence on file may not be sufficient for the purposes of the Pension Bureau, your committee are of the opinion that it is sufficiently clear therefrom that claimant's present disabilities followed upon his army service, and being shown sound prior thereto it is reasonably sure to presume that the same originated as alleged, and therefore report favorably on the accompanying bill and ask that it do pass.

O

ELIZABETH HECKLER.

February [illegible], 189[illegible].—Committed to the Committee of the Whole House and ordered to be printed.

Mr. [illegible] from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. [illegible]]

The Committee on Invalid Pensions, to whom was referred the bill H. R. [illegible] granting a pension to Elizabeth Heckler, submit the following report:

The facts in the case are set forth in the report of the Committee on Invalid Pensions, House of Representatives, Fifteenth Congress, which is as follows:

The proposed beneficiary is the widow of Frances Heckler, who served in the United States Navy from March 1, 1861, to March 2, 1864, and as musician of the Twenty-third Regiment New York Volunteers from May 17, 1861, to June 28, 1862, when he was discharged upon surgeon's certificate of disability. The soldier applied for pension August 1, 1862, on account of asthma contracted in the service of [illegible] Fifteen's Chasseurs. He died without completing the claim September 30, 1864. The claim was, however, completed by the widow after a very thorough special examination. Her claim has been rejected by the Pension Bureau on the ground that the fatal disease, asthma, is not accepted as a result of the asthma.

The diagnosis of the fatal disease was made by a physician who had no personal acquaintance with the soldier until within a week of his death, and who admits in his report on before the special examiner that he knew of no other office by a the case at the time of his treatment of Heckler. The proof in support of the invalid claim for asthma is so overwhelming, strong as to its severeness from date of discharge to death that the Commissioner of Pensions, upon a personal review of the case, directed even in the absence of a medical examination. The claim not having been rejected for action thereon during the soldier's lifetime, a reissue of the original pension at one-half of total to a total pension from date of discharge.

The special examiner in his report says:

"There is no evidence whatever that cystitis, etc., existed up to a few weeks before his death, and there is overwhelming evidence that he suffered greatly and continuously from discharge to death with asthma. From personal experience I know that cystitis, etc., is a painful but lingering disease, and one that does not result fatally in a few weeks or months."

Again he says:

"The claim is a singularly clear one, and the witnesses exceptionally reliable, and it is very plainly shown that the soldier was sound and healthy before enlistment, and earning a good living by his profession as a musician, and that after his discharge he never earned nor was able to earn a dollar at it owing to asthma."

Admitting that cystitis did exist during the last week or two prior to death, and that it became necessary to relieve the suffering therefrom by medical treatment, there yet remains the undisputed fact that asthma was, and had been for years, the principal disabling cause, and that it alone was of such a serious character as to cause death at any moment.

The claim of the widow is highly meritorious, and therefore the bill is returned with the recommendation that it do pass.

Your committee concur in the conclusions reached in the said report, and therefore report favorably on the accompanying bill, and ask that it do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 136.

THERESA HERBST.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1043.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1043) granting a pension to Theresa Herbst, submitted the following report:

A similar bill was passed by both Houses of Congress during the Fiftieth Congress, and vetoed by the President.

The history of the case is fully set forth in the report of the Invalid Pensions Committee, House of Representatives, of said Congress, which is as follows:

The beneficiary named in the bill is the widow of John Herbst or Harpst, who served in Company G, One hundred and fortieth Regiment New York Volunteers, and died of disease contracted in the service September 25, 1868. Her claim for pension has been rejected on the ground that the soldier while a prisoner of war joined the Confederate army.

The records of the War Department show that the soldier enlisted August 26, 1862. He was wounded in head at the battle of Gettysburgh, Pa., for which wound he was treated in hospital until September 5, 1863. At Petersburgh, Va., while in action, on August 22, 1864, he was captured, and taken to Salisbury, N. C., where he was found in the Confederate service at the capture of that place by General Stoneman's forces in the spring of 1865, exact date not shown. According to the record he made his identity known voluntarily, pleading that he joined those forces to prevent starvation. He was placed under arrest, but released without trial July 6, 1865, and finally honorably discharged October 11, 1865.

The evidence before your committee clearly shows that at date of discharge the soldier was a great sufferer from rheumatism and dropsy; that he continued in this condition, gradually growing worse, and finally died of disease of heart, the result of army service.

The only point at issue is the soldier's enlistment in the Confederate service. The statutes exclude from the pension rolls such persons or their heirs who have voluntairly aided or abetted the Confederates during the war of the rebellion, unless subsequent to the service in the Confederate army or navy such person served in the Army of the United States and in the latter service contracted a disability.

It can hardly be charged against this soldier that disloyalty to the flag prompted him to take the step which thus far has kept his widow out of pension to which she would seem to be so justly entitled otherwise, for his patriotism is so fully established by the testimony of his officers and comrades as to remove all doubts on that point. The command to which he belonged was engaged in some of the fiercest battles of the war, among which it is only necessary to name Fredericksburgh, Chancellorsville, Gettysburgh, and Mine Run. Could any one doubt his patriotism and bravery when taken off the field with a bullet-shot in head, as he was from the bloody field of Gettysburgh?

Some other cause must therefore be assigned for the action taken by him. For the purposes of this report it does not seem necessary to enter into the acknowledged pitiable condition of those who by the misfortunes of war became the prisoners of the

comrades, as well as the mayor
utable citizens, join in her peti
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report favorobly on the accomp

Your committee, concur
likewise recommend favora

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 137.

JULIA FLEMING.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 15.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 15) granting a pension to Julia Fleming, submit the following report:

The beneficiary is the widow of James Fleming, who was a private in Company D, Second Regiment United States Artillery. He received a comminuted fracture of left knee at the battle of Muddy River, Virginia, November 8, 1863, from a solid 12-pound shot, which rendered necessary an amputation of the left thigh, lower third, on the battle field, and the hospital record shows that he suffered very much from abscesses. He was discharged by reason of disability July 4, 1865, remaining and being treated in various hospitals until that time. He was taken sick with his last sickness about the 5th day of December, 1883, and died December 22, 1883, from dropsy, affecting his liver and lungs, and uræmic poisoning.

The widow filed a claim for pension, but the same was rejected on the ground that the cause of the husband's death was not the result of his military service, or of the amputation of his leg. The evidence shows that while there were no gatherings or abscesses formed on the stump, the soldier frequently complained of severe pains at the stump, at times causing the perspiration to start, followed by difficulties with his stomach. One of the physicians attending him in his last sickness says that the disease from which he died—

> Was in all probability a sequence of a wound which necessitated amputation of the leg, and exposure while in the United States service.

The other physician who attended him in his last sickness says:

> I would not say unconditionally that death cause was the result of the wound and amputated leg, but it might be a sequence. It would not be unreasonable to think it a sequence of the wound and amputation.

There was some evidence that the man occasionally drank beer and other intoxicating liquors, but the general evidence is that he was a sober, industrious man, occasionally drinking but not to excess. One physician who knew him testifies that in his opinion the amputation of the leg had nothing to do with his death. The beneficiary is shown to be a worthy poor woman dependent upon her manual labor for the support of herself and children, and your committee can but believe that she should have the benefit of the doubt, and therefore recommend that the bill do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 138.

JOHN TAYLOR.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2767.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2767) increasing the pension of John Taylor, submit the following report:

The applicant for increase is now receiving a pension of $16 per month under special act of Congress, he having been previously allowed $8 per month, under the general laws.

The wound and results are described in the medical certificates as follows:

Ball entered 2 inches below and behind the right angle of the mouth, injuring the inferior maxilla and passing through the structure of the lower portion of the mouth, coming out an inch above and to the left of the pomum Adami; cicatrices are depressed and adherent; there is considerable alilia, probably owing to the injury of the nerves of the tongue; there is no external evidence of injury to the left shoulder, but there is apparent slight loss of sensation of face and of left shoulder.

Examining Surgeon S. A. Lumly certifies to gunshot wound fracturing inferior maxillary right jaw; ball entering lower border of the inferior maxillary, passing inwards and emerging from left jaw below inferior maxillary, removing several molars and causing partial paralysis of vocal organs and impairing speech; considerable pain in cold weather; atrophied condition of left jaw; facial neuralgia; health impaired; degrees of disability permanent.

Examining Surgeon George Kellog and others certify substantially as last above, and add, that articulation is much impaired; that claimant at times is unable to speak; has difficulty in mastication. Claimant says his articulation was perfect before he was wounded; has loss of power in left arm and hand; circulation slightly impaired, probably due to injury to filaments of cavical flexus.

He has personally appeared before the committee, and it is evident that he is incapable of using his left arm so that he may earn his livelihood by manual labor; that he is also afflicted with a painful and embarrassing stammering of his speech, arising from the gunshot wound above referred to.

The pensioner alleges, and your committee have reason to believe, that since the passage of the act increasing his pension as above stated, his disability has greatly increased. The impairment of his speech is greater, while the sufferings from facial neuralgia are more intense.

While the impairment of speech does not necessarily follow an inability to perform manual labor, it is an almost fatal hindrance to the

procurement of employment, and being also otherwise disabled, by reason of his neuralgic affections, he chances for gaining subsistence by manual labor are reduced to a minimum.

With this view of the case, your committee are of opinion that the relief asked for should be granted, and therefore report favorably on the bill and ask that it do pass, amended, however, by striking out the word "thirty" in line 5, and insert therein the words "twenty-four."

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 139.

AMASA CHASE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following:

REPORT:

[To accompany H. R. 5995.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5995) granting a pension to Amasa Chase, submit the following report:

The claimant enlisted as private in Company C, one-hundred and twenty second New York Volunteers, July 30, 1862, and was mustered out of service June 23, 1865. His claim for pension on account of chronic diarrhea, rheumatism, and malarial poisoning has been rejected by the Pension Office on the ground that, in the opinion of the medical referee, the disability found to exist by medical examination are due to old age rather than the Army service, he being about seventy-seven years of age.

The only record of any disability during service is treatment for debility in the summer of 1864. The regimental surgeon testifies that soldier did suffer from the alleged disabilities and received treatment therefor at the field hospital. The surgeon also remembered that about April, 1865, claimant, who had been color-sergeant, became so debilitated from disease that he was obliged to give up the colors. Comrades also testify that he suffered from alleged diseases while in service. The evidence as to continuance of disability since discharge is satisfactory. Medical examination shows abdomen tender, lumbar muscles tender on each side of spine. Can not raise left arm above level of shoulder; there is epigastric pulsation of heart, action irregular. There is evidently considerable disability, and while some of it may be due to age, yet your committee are unwilling to attribute all thereto in the face of nearly three years' faithful service, and the evidence heretofore referred to, clearly showing the incurrence of disability during such a service.

The bill is therefore returned with the recommendation that it do pass, amended, however, by inserting after the word "Volunteers," in line 7, the words, "at the rate of twelve dollars per month."

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[illegible]

[illegible]

[illegible]

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 141.

ANN FORD.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3955.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3955) granting a pension to Ann Ford, submit the following report:

The claimant is the widow of John Ford, late private of Company F, Fourteenth Regiment New York Heavy Artillery, from August 6, 1863, to August 3, 1865. She was married to the soldier in 1850. Her claim for pension has been rejected by the Pension Bureau, because soldier's death, on June 12, 1880, from arsenic poisoning, is not shown to have any connection with his military service.

The records of the War Department show that soldier at various times during service was treated for constipation, dyspepsia, malarial fever, disease of throat, erysipelas, and sciatic rheumatism. He never recovered, but continued an invalid until his death, as is shown by good and competent testimony, the principal cause of his disability appearing to have been a dropsical condition of his lower limbs. He became entirely unable to support himself and family by manual labor, and having no means to procure the necessaries of life and no home, except in the poor-house, he became despondent and took his life.

The widow, now old and poor, having no claim under the general law, asks Congress to afford her some aid in her declining days because of the faithful services of her husband. Had he applied for pension he would, upon the records of the War Department, undoubtedly have received a pension for his Army disabilities.

The committee are of opinion that the case is one worthy of consideration, and therefore report favorably on the accompanying bill and ask that it do pass, amended, however, by striking out all after the word "laws," in line 7.

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(H. R. 3956) granting a pe
report.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 143.

MARY TAFFE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5010.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5010) granting a pension to Mary Taffe, submit the following report:

That the beneficiary is the widow of Henry Taffe, late a private in Company F, Eighth Regiment New York Volunteers. He enlisted September 25, 1861, and was killed March 16, 1863, leaving the beneficiary his widow, now nearly seventy years of age.

The report of the Adjutant-General U. S. Army contains the following statement:

He (the soldier) was murdered on the night of March 16, 1863, near Windmill Point, Va., by private Cornelius Collins, Company F, Twentieth New York State Militia, for which he was tried and sentenced by general court-martial.

N. B. Hoysradt, the first lieutenant and commanding officer, in a statement made December 6, 1863, states as follows:

On the 16th day of March, 1863, the said private, Henry Taffe, F Company, Twentieth Regiment New York State Militia, was on a tour of guard duty in the provost-guard station at Windmill Point, Va., and said guard tour having expired on the afternoon of said day, he asked the permission of the commanding officer (myself) of the guard to visit a provost-guard post about one-half a mile north of Windmill Point, Va., on the beach of the Potomac River. Such permission being granted, the said Henry Taffe visited the said guard house. Before leaving for said post he further obtained permission from me to stay at such post over night. While there Cornelius Collins, F Company, Twentieth Regiment New York State Militia, became intoxicated, noisy, boisterous, and quarrelsome. The said private, Henry Taffe, deceased, endeavored to quiet and pacify the said private, Collins. Such endeavor resulted in a quarrel between Private Collins and Private Taffe. Whereupon the said Private Collins, F Company, Twentieth Regiment New York State Militia, and then about 3 o'clock in the morning of March 17, 1863, and there, about one-half mile north of Windmill Point, Va., bayoneted and caused the death of the said Private Henry Taffe, F Company, Twentieth Regiment New York State Militia.

Augustus Cole, a member of said company and the only survivor of the party present at the time of the murder, states in his affidavit that he and three other members of Company F, including Collins, were and had been stationed for some time on the beach of the Potomac, about half a mile below Windmill Point, to prevent smuggling, and had built for themselves quarters there. That a day or two before St. Patrick's day, Doyle, one of the party, had obtained from Lieutenant Hoysradt an order on the quartermaster for some whisky, upon which he got the whisky. At their request one McCloskey, of same company, and Taffey visited them. He says: "They (McCloskey and Taffe) came up to our quar-

ters just before dark, and they were both sober at the time." In the afternoon before, a tree had been cut down for fire-wood, and was lying about 10 feet in front of and crossways the door. The party drank occasionally. Collins became "boisterous and wanted to fight. Taffe and some of the others tried to pacify him." Taffe and Collins at last got outside of the tent. Taffe in going out fell over the log, and while lying on the ground, Collins stabbed him through his body with a bayonet fixed on a gun and then and there killed him, Collins following Taffe out and stabbing him after he had fallen.

Cole says that he was well acquainted with Taffe, that "he was a good man and a good soldier, and always ready for duty. He had the confidence of both officers and comrades, and never heard of his being reprimanded or punished, or off on sick leave."

March 24, 1863, Collins was tried before a court-martial and convicted of murder, and sentenced to be hung. On the trial only one witness was called to testify at any length as to the circumstances connected with the murder. He represents that all the party were under the influence of liquor, and that Taff and Collins had some difficulty. He also testified that Collins tried to bayonet him (the witness) and wounded him, but not seriously.

That on the 25th day of March, 1863, the members of the court-martial united in a recommendation that Executive clemency be extended to Collins, not on the ground that he did the act in self-defense, or that he was threatened by a drunken man, but "that said Collins was under the influence of liquor at the time he committed the offense;" that the liquor was furnished by the officers of the company, and that if the officers had done their duty the homicide would never have been committed.

The sentence was commuted to imprisonment during the war.

The claim was filed May, 1863. The same was rejected because soldier was not in the line of duty when killed. An appeal was taken to the Secretary of the Interior, and on the appeal the decision was affirmed on the ground that it did not appear that the death of the soldier occurred in and was due to the line of duty.

The soldier was at the place where he was killed with express consent of his superior officer and was duly authorized to spend the night. He went there a distance of half a mile to visit the comrade members of his own company and spent the night, the whisky was furnished by the express consent and on the order of his superior officer. He was sober when he went there. There is a total want of any evidence that the soldier did or said anything to provoke or continue the altercation.

At the second altercation, the soldier of his own accord and evidently to escape his murderer left the quarters, going out alone, but he was followed by Collins, enraged and armed with a gun and fixed bayonet, who came up to his fellow-comrade and without any provocation stabbed him to his death, and then tried to take the life of another comrade.

We have granted a pension to a soldier who, absent on a furlough to go home, had been killed by accident; to the soldier who, leaving his ship with a pass to go ashore for his own pleasure, was drowned by the capsizing of his boat. Your committee believe that this poor Irish widow has a just claim, which should be recognized by the Government, and therefore recommend that the bill do pass, with an amendment striking out the words "the same to begin from the date of her original application," in the ninth line from the top.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 144.

BRIDGET CARROLL.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Sawyer, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2302.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2302) granting a pension to Bridget Carroll, have had the same under consideration, and beg leave to submit the following report:

The facts in the case are fully set forth in the report of the Committee on Invalid Pensions, Fiftieth Congress, which is as follows:

Bridget Carroll is the mother of Patrick J. Carroll, who re-enlisted in Battery H, Fourth Regiment United States Artillery, October 21, 1881, after the completion of a previous term of enlistment in the same command. He was accidentally drowned September 12, 1886, by the capsizing of a sail-boat near Fort Warren, Mass., while on pass. The commanding officer of the battery, in a letter to the soldier's brother dated September 13, 1886, says:

"Sergeant Carroll was in a small sail-boat with two other men and the boat was capsized near the shore. One of his comrades tried to save him, but your brother was entangled in the sail and ropes, and, unable to swim, was dead before relief could reach him. * * * Sergeant Carroll was a good soldier and non-commissioned officer, and his death is deplored by his comrades and his officers."

Having been drowned while off duty the mother is not entitled to pension under the general laws.

A large number of affidavits have been filed with this committee, from which it appears that the soldier left neither wife nor minor child surviving him; that he aided in the support of his parents; that they never possessed any real or personal property producing any income; that the father of the soldier died in the poor-house a short time before the latter's death, and that the mother at the age of seventy-six years is dependent upon others for support.

Nearly ten years' honorable service of the son clearly entitles the mother under these circumstances to the favorable consideration of Congress.

The bill is therefore returned with the recommendation that it do pass.

Your committee are likewise of opinion that the claim is meritorious, and therefore recommend the passage of the accompanying bill.

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DOES NOT CIRCULATE

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 145.

MARY A. SELBACH.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Yoder, from the Committee on Invalid Pensions, submitted the following

REPORT:

(To accompany bill H. R. 3262.)

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3262) granting a pension to Mary a Selbach, submit the following report:

Mary A. Selbach is the widow of Gustavus Selbach, who enlisted September 8, 1864, in Company M, Ninth Regiment Ohio Volunteer Cavalry, and was discharged June 13, 1865. He died January 16, 1886. The widow filed her claim for pension May 31, 1887. He was disabled in the service, and was drawing pension from the Government at the time of his death. He was pensioned for disease of ears. The widow's claim was rejected solely on the ground that the disease which caused soldier's death was not attributable to his service, and had no connection with the disease from which he died. The surgeons who attended him during his last illness, and who appeared to be scientific men and medical experts, testify as follows:

> We are practicing physicians, and have been acquainted with said soldier for about seven years; intimately acquainted with him as a friend and as his family physician during this time. The immediate cause of his death was pneumonia, although he had been suffering from suppuration in his middle ear (otitis) and disease of the kidneys to an extent which greatly undermined his health, and that he succumbed to an attack of pneumonia, which in a person of ordinary good health would not have been considered serious. There is no doubt in our mind that the diseases from which said G. Selbach suffered before the occurrence of the pneumonia were the true cause of his death, and that they incapacitated him to a great extent from properly attending to his business. (Signed, A. Schloemilch, M. D.; W. Meacher, M. D.).

This is the only medical evidence on file in the Pension Office bearing on the cause of death, in which these doctors say that the soldier died from a slight attack of pneumonia which in an ordinary healthy person would not have been serious. This clearly shows, in the opinion of your committee, that, had it not been for the debilitated and broken-down condition that the soldier was in, caused by the disease which he contracted in the Army, the slight attack of pneumonia would not have been sufficient to cause his death. These doctors also say that there is no doubt in their minds that the disease from which said soldier suffered before the occurrence of pneumonia was the true cause of his death; clearly showing that at that time these medical men, as medical experts, gave it as their opinion that the death of the soldier was caused by the disease that he contracted in the Army and from which he was suffering, when a slight attack of pneumonia, as they say, was the

the immediate cause of death, but that the debilitated condition in which his system was found previous to this attack, as they say, was no doubt the cause of his death.

If what these doctors say is true—and there is no evidence on file to contradict them—it clearly establishes the fact in the minds of your committee that this widow is entitled to a pension, as it leaves no doubt in the minds of your committee, as it did not in the minds of these doctors, that the disease from which the soldier suffered before the occurrence of pneumonia was the true cause of his death; and if this is true, there can be no doubt but that the claim is a meritorious one; and the committee therefore recommend the passage of the bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 146.

MARY A. KINSLEY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Yoder, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1987.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1987) granting a pension to Mary A. Kinsley, submit the following report:

Mary A. Kinsley is the widow of William Kinsley, late private of Company E, Fifty-fourth Regiment Ohio Volunteer Infantry, who enlisted on the 27th day of September, 1861, and served three years, when he was discharged on the expiration of his term of enlistment. Was wounded in the battle near Dallas, Ga., May 25, 1864; was engaged in many battles and has a record without a blemish, as shown by hospital record and by officers and comrades of his regiment; also the evidence of the fact of his prior soundness is abundantly shown and the facts are well established.

He died in the year 1882 from the effects of his wounds received in battle as alleged by his widow. The fact is contradicted by the physician who attended him during his last sickness, who gives the cause of his death as phthisis pulmonalis. The physician in an affidavit states that he was called to see him, and that he was told that he had a gunshot wound in one of his groins, but that he did not examine it. In a letter afterwards, to the Department, he states that his attention was never called to the wound in the groin, nor did the soldier make any complaint of it. He says further: "I have no means of knowing the locality of the wound or the tissues involved, as he never made complaint," etc., which clearly goes to show that this physician was mistaken or ignorant of the condition of his patient. Outside of the statement of this physician there is nothing to show that this man did not die from the wounds received in battle.

The evidence clearly satisfies your committee that this man when he entered the service was a healthy, physically sound man, and that he was engaged in many battles; that he never shirked his duty as a soldier; that he was severely wounded in the abdomen, and that he never recovered from the effects of it, but died in consequence of said wound, notwithstanding the contradictory statement of this physician, who contradicts his own assertion that the man finally succumbed to phthisis pulmonalis. Your committee is of the opinion that this is a meritorious case, and recommend the passage of the bill.

DOES NOT CIRCULATE

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 147.

ANN E. MUSSMAN.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, of Indiana, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1246.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1246) granting a pension to Ann E. Mussman, having had the same under consideration, submit the following report:

A similar bill was introduced in the Fiftieth Congress and referred to the Committee on Invalid Pensions, which after due investigation reported the same back favorably. A copy of said report is filed herewith and made a part hereof.

Your committee, for the reasons stated in said report, report this bill favorably and recommend its passage.

[House Report No. 3318, Fiftieth Congress, first session.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2157) granting a pension to Ann E. Mussman, having had the same under consideration, submit the following report:

Claimant is the widow of William Mussman, who enlisted September 7, 1861, as first lieutenant of the Sixth Battery Indiana Light Artillery, and served until December 10, 1862, when he was discharged from the service and returned to Indianapolis, Ind., where he died March 24, 1873, of apoplexy. Widow's claim for pension was rejected by the Pension Office "on the ground that the cause of soldier's death, apoplexy, was not a result of heart disease."

Jacob L. Bieler, who was a member of said Sixth Indiana Battery, testifies as follows:

"I was an artificer of said Sixth Indiana Battery. I know that when said Mussman entered the service in October, 1861, he was a sound, able-bodied man, being stout and healthy; that Mussman was an officer in the German army and resigned that service only a short time before he entered the United States service. Our battery had a hard march from Calhoun, Ky., to South Carrollton, Ky., being a forced march of 30 or 40 miles. When on said march, the date not now remembered, said Mussman complained of being sick, and he looked very much fatigued, but being strictly a military man he did not associate with his men nor say much about his trouble; but it was understood that on this march, by reason of overexertion, he contracted the heart disease. I saw him treated for this trouble by Surgeon Armstrong, of the Thirty-first Indiana Volunteers, at various times. Mussman resigned the service on account of his sickness. After the war I saw him frequently up to his death, and he died of said heart disease."

Adam Frank, who was corporal of said Sixth Indiana Battery, testifies that said Mussman was a stout, robust man at the time of his enlistment, and while with the battery on a march near Moscow, Tenn., by reason of overexertion and exposure, he contracted heart disease and camp diarrhea, and was compelled to resign by reason of said disease.

William Wundran testifies that he was intimately acquainted with Mussman in Germany, and that they came to America together, and that at the time of his enlistment he (Mussman) was a stout, able-bodied man, and that when he came home from the service, about December, 1862, he was almost dead; was suffering with disease of heart, diarrhea, and a severe cough. He gradually grew worse and was never able to do but little work after his return from the service. He died March 24, 1873, and the cause of death was heart disease.

This widow is now advanced in age and has no means of support.

The above facts are fully corroborated by other comrades and neighbors.

Your committee, after considering all the evidence presented, are of the opinion that this is a meritorious claim, therefore report the bill favorable, with the recommendation that it do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 148.

CHARLES A. PLATZ.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, of Indiana, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2824.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2824) granting a pension to Charles A. Platz, having had the same under consideration, submit the following report:

A similar bill was introduced in the Fiftieth Congress and referred to the Committee on Invalid Pensions, which, after due consideration, reported the same back favorably, and a copy of said report is filed herewith and made a part hereof.

Your committee, for the reasons stated in said report, hereby report this bill (H. R. 2824) favorably and recommend its passage.

[House Report No. 3651, Fiftieth Congress, second session.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 11414) granting a pension to Charles A. Platz, have considered the same and submit the following report:

The records in the case show that claimant enlisted in Company A, One hundred and thirty-eighth Indiana Regiment, to serve one hundred days, and was discharged September 22, 1864; April 12, 1865, he re-enlisted in Company A, One hundred and fifty-fourth Regiment Indiana Volunteers. The regiment encamped at Camp Morton, Indianapolis, and while there claimant was ordered to water horses by Captain Stilson, and while so engaged was kicked by a horse on the left side and was carried to the barracks insensible. It is shown that claimant was a sound, healthy man at enlistment. There was no comrade present when the accident occurred. Captain Stilson testifies that he ordered claimant to water horses, and that shortly afterwards he was brought into camp badly hurt and insensible.

William Rosenbury testifies that he saw claimant lying in the barracks badly hurt, and upon inquiry was informed by those around him that he had been kicked by a horse. Shortly after the accident occurred claimant was removed to his home in South Bend, Ind., where he was discharged May 19, 1865.

The claim was rejected on the ground of no record and claimant's inability to adduce satisfactory evidence of origin. There is abundance of medical and other proof as to continuance of the disabilities up to the present time.

The committee believe the evidence is sufficiently strong to warrant the conclusion that the injury was incurred in the line of duty, as stated, and, so believing, we submit a favorable report and recommend the passage of the bill.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 149.

JOHN J. FREELAND.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, of Indiana, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 7010.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 7010) to restore the pension of John J. Freeland for the loss of his right foot, have had the same under consideration and now submit the following report:

In this case the committee find that a bill (H. R. 12513) was introduced near the close of the second session of the Fiftieth Congress, a favorable report (No. 4065) was adopted by the Committee on Invalid Pensions, and the bill was passed by the House of Representatives, but too late to reach the Senate to be acted upon by that body before the close of the session.

Having examined the evidence, we find the facts to be substantially as set out in said report. We therefore adopt said report and recommend the passage of the accompanying substitute bill.

Said report is as follows:

The claimant enlisted in Company I, Seventy-fourth Regiment Indiana Volunteer Infantry, August 9, 1862, and was honorably discharged January 28, 1865. He filed his original declaration for pension February 17, 1865, alleging that at the battle of Kennesaw Mountain, Georgia, on June 20, 1864, he was wounded by a musket ball from the enemy in the left instep, making a very painful wound; and that while on wounded furlough, October 18, 1864, a railroad train ran over the right foot, making amputation at the lower third necessary.

In his declaration, filed February 9, 1876, he gives the following account of the injury which resulted in the loss of his right foot:

Having been wounded, as alleged above, in the left instep, he was sent to the hospital on the field and afterwards to Chattanooga, Nashville, Louisville, Jeffersonville, and from there to Madison, Ind., where he was furloughed and ordered to his home at Millersburgh, Ind., where he arrived the latter part of September or early part of October, 1864.

In obedience to the order contained in his furlough he started to report to the authorities at Madison, Ind., before the time specified in his furlough should expire. When claimant arrived at Indianapolis on his return, some time in October, 1864, the wound in his left instep was in such a condition that it was with great difficulty that he could walk, and the commanding officer at Indianapolis caused him to be stopped at that place, and indorsed an order upon claimant's furlough, directing him to return to his home and report to him in twenty days from that date.

He also furnished claimant with transportation to his home.

On the 18th of October, 1864, claimant arrived at Millersburgh, Ind., in pursuance of said order, and in undertaking to step off the cars, the train being very slightly in motion, he stepped on the wounded foot, which was weak and stiff, causing him to fall. By his fall his right foot was caught by the wheel of the car and was so mangled as to render amputation necessary.

On September 6, 1865, a pension was granted him at the rate of $2 per month, commencing January 28, 1865, for wound of left ankle.

On March 9, 1867, a pension for amputation of right leg was granted him at $8 per month from January 28, 1865, and increased to $15 per month from June 5, 1866.

On information received from the surgeon who assisted in the amputation of claimant's right leg—which was deemed sufficient by the Bureau of Pensions—that the injury to said leg was the result of carelessness on the part of claimant, the pension was suspended September 17, 1867.

The claimant made application for restoration, showing that he was proceeding in accordance with instructions from his superior officers at the time the injury was incurred. The same was rejected on account of loss of right foot not being incident to the service, but the result of his own carelessness and imprudence, as stated by the Commissioner in his order of rejection.

After careful examination of all the evidence in this case, there seems to be but one question for the committee to consider, and that is whether the claimant was in the service of the United States and in the line of duty at the time the injury to his right foot was incurred.

We think it is fully shown that he was regularly in the service at that time, and that he was discharging his duty under his furlough when the accident occurred.

In consideration of all these facts, it is the opinion of the committee that the claimant was in line of duty when he received the injury for which he was pensioned and which was afterward suspended, and that the relief asked for by the claimant in the bill ought to be granted.

We therefore submit a favorable report and recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 150.

ELMER A. SNOW.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FLICK, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6099.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6099) granting an increase of pension to Elmer A. Snow, submitted the following report:

Elmer A. Snow was discharged as trumpeter of M Troop, Third United States Cavalry, March 19, 1877, on surgeon's certificate of disability, a copy of which from the files of the Pension Office, says:

Gunshot wounds of right elbow and left wrist. Anchylosis of right elbow and both wrists, and all the joints of both hands; unable to dress or feed himself. Disability total.

And from the Adjutant-General's Office:

Gunshot wound left wrist and right arm, fracture of bones of wrist and arm.

And Examining-Surgeon T. B. Hood says:

Gunshot wound of left wrist. The ball entered near the head of radius and passed through, fracturing the bones and injuring the joint, also cutting off the radial artery; the motion of the wrist is limited, flexed on the forearm; the palm stiff; the fingers extended and impossible of but limited and feeble flexion; can not grasp a fork or knife in this hand, and can certainly not use it in any kind of labor. Equal to the loss of hand, and permanent. Gunshot wound near the right elbow-joint, injuring the nerves supplying forearm and hand, which are paralyzed and useless; fingers stiff, and unmovable by the will; can grasp nothing in his hand. Equal to the loss of a hand. We believe this man's disability is permanent, and he requires and always will require aid and attendance.

James H. C. Gaskins, an attendant, says on oath:

I have undressed and dressed him, cut up his food and buttered his bread, brushed his clothes, and undressed him in the water-closet sufficient for him to obey the calls of nature, and other minor aid.

Patrick H. Briscoe, another attendant, on oath says:

I have undressed him, cut up his food, buttered his bread, put on his overcoat, buttoned his shoes, and rendered much other aid; said aid being necessary, as said E. A. Snow has lost the use of both his hands.

Samuel G. Wooding, on oath says:

I have undressed and dressed him, and washed him at the bath-room in the House of Representatives at different times.

All the above were sworn to March 20, A. D. 1879. He now receives a pension of $72 per month under act of Congress approved June 16, 1880.

He was before your committee with his supporters off, and it was apparent to us that he was as utterly helpless and as totally disabled as if his hands were amputated; and he is constantly obliged to wear a supporter on his left forearm and hand to hold his left wrist-joint together, and also one on his right arm, from above his elbow to his hand, to support his right elbow-joint, arm, and hand.

In view of the fact that bill S. 379, Fiftieth Congress, approved February 12, 1889, contained a clause for the loss of the use of both hands, as it passed the Senate, which would have given him a pension of $100 per month, and it was struck out by the House committee, fearing it would complicate the bill; but as he was then as totally helpless, and required the same aid and attention as if his hands were off and always will, we recommend a favorable report on the bill, amended, however, by striking out all after the word "month" in line 7, and insert therein instead the words "in lieu of the pension now received by him."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 151.

HELEN S. SPRING.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Flick, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2132.]

It appears from the evidence on file with the committee that the petitioner received a pension as the widow of John R. Hilton, late assistant surgeon Second New Jersey Volunteer Infantry, from the date of his death, March 17, 1863, until March 22, 1887, when she married William S. Spring, her second husband having been a private in Company A, Forty-fourth Massachusetts. In a little less than a year after marriage, March 19, 1888, Mr. Spring died after a lingering illness, leaving his widow entirely unprovided for. She now asks for a restoration of pension.

The circumstances in this case make it an exceptionally deserving one. The petitioner's first husband, as appears from the record, died in the service, after eighteen hours' illness, from over-exertion in caring for the wounded on the battle-field. Her brother, Redford Sharpe, served throughout the war, entering as a private and being brevetted a lieutenant-colonel for gallant and meritorious conduct before Richmond. After the death of her first husband she was partly dependent upon him for support, but he died from disease contracted in the service while acting as assistant surgeon in the regular Army at San Antonio, Tex., March 1, 1873. Another brother, Henry M. Sharpe, second lieutenant Company D, Fifteenth New Jersey Volunteers, died January 8, 1869, from disease contracted in the service.

O

51st Congress. 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 152.

ELIZABETH A. GROFF.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FLICK, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1875.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1875) granting a pension to Elizabeth A. Groff, having examined and considered the same, respectfully report that this precise bill passed both Houses of the Fiftieth Congress but failed to become a law because passed so late in the session that the President did not have time or at least did not examine the same. We approve the bill and report the same back with a recommendation that it do pass, and adopt for details the report of the Senate Committee on Pensions of the Fiftieth Congress upon the like bill as follows:

This is a bill to pension Elizabeth Groff, widow of Charles H. Groff, late a private in Company K, Forty-fourth Regiment Iowa Volunteers. It was rejected by the Pension Office on the ground that congestion of the brain, of which the soldier died, was not referable to his service.

The soldier applied for an invalid pension for injuries to back and hips caused by falling into a rifle-pit at La Grange, Tenn. The testimony of his comrades is satisfactory as to his prior soundness. Josiah A. Wilbur, comrade, examined by special examiner, and whose reputation is good, remembers that the soldier was badly hurt by falling into a rifle-pit at La Grange, Tenn. Has not seen him since discharge. George W. Ware, comrade, remembers distinctly that near La Grange, Tenn.—

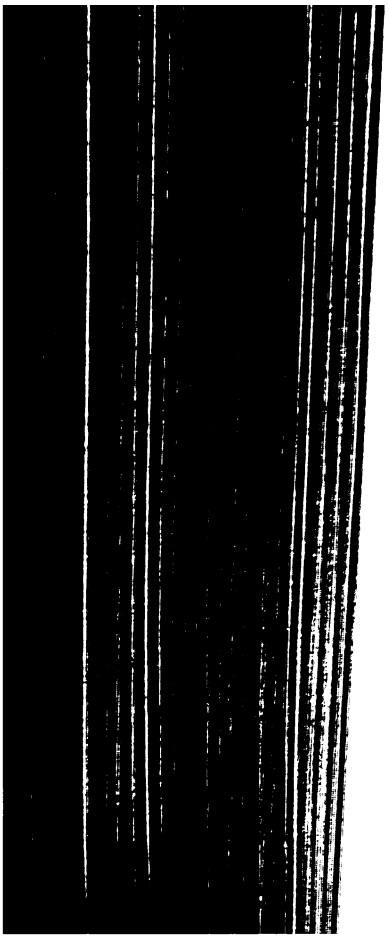
"A number of our boys fell into a rifle-pit. Were moving at double-quick, expecting an attack from General Mosby. I was near the front and passed over safely, but the boys behind fell in, three or four deep. Captain Wilson said it was a wonder some were not killed. It was on a dark night."

Other soldiers testify as to the rifle-pit event, but do not remember Groff; while others still have no recollection of the circumstance or of Groff. Their testimony is only remarkable for what they do not know.

There is enough testimony to corroborate the soldier's statement as to his falling into a rifle-pit, but he had no attorney to aid him with his invalid application, and therefore the connection of his disability and death with his service is imperfect. After discharge he lived in Iowa, and neighbors say they never heard him complain. It is likely that he suffered without complaining. He kept a store, and could do without pension until he became very poor and removed to Florida. Then he applied, but it was long after the war and his claim was not well developed.

A special examiner, who was sent to Florida to investigate the case in the interest of the widow's claim, says:

"The claimant is a woman of good reputation for truth and veracity in Obrine, Fla. I am constrained to place a good deal of stress upon the truthfulness of her statements. She impresses me with being a woman of high moral courage, and though in destitute circumstances, yet she appears to be very energetic. I found her domiciled in a very small cabin out in the pine forests of the subtropical region, where any one possessing the least degree of pride might die of absolute despair."



51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 153.

LOVINA WRIGHT.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Flick, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1873.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1873) granting a pension to Lovina Wright, having examined and considered the same, respectfully report that this precise bill passed both houses of the Fiftieth Congress, but failed to become a law because passed so late in the session that the President did not have time to, or at least did not, examine the same. We approve the bill, and report the same back with a recommendation that it do pass, and adopt for details the report of the Committee on Invalid Pensions of this House of the Fiftieth Congress upon the like bill, as follows:

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5758) granting a pension to Lovina Wright, respectfully report:

That Lovina Wright is the widow of John J. Wright, who was a private in Company L, Second Iowa Cavalry, who was pensioned for injury to spine incurred in said military service, and who died June 24, 1885, of peritonitis and stricture of the bowels.

Dr. A. B. Bowen, of Maquoketa, Iowa, who attended the soldier in his last illness, as well as at times for years previously, and had several times examined him as United States examining surgeon, and was, consequently, familiar with the soldier's disease and its progress and resulting complications, and Dr. D. N. Loose, of the same place, who assisted said Dr. Bowen in making the autopsy, testify that the disease of which the soldier died was caused, in their opinion, by the injury to the spine for which he was pensioned, and resulted therefrom.

The claim of the widow, however, was rejected in the Pension Office because the medical referee declined to accept the soldier's fatal illness as the result of said injury to his spine.

Your committee are inclined to give the widow the benefit of any existing doubt, and report the bill back, with the recommendation that it pass.

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Mr. FLICK, from the Co

[To

The Committee on Inva
(H. R. 6304) granting a pe
and considered the same,
recommendation that it do

A report was made by
Forty-ninth Congress upon
and we adopt the report th
of age only emphasizes the
eration to the said Bischer

The report was as follow

Frederick Bischer is the father
Thirty-fifth Regiment Iowa Infa
pital at Benton Barracks, Missou

The soldier left no widow or
1852.

The father made application f
rejected by the Pension Office—

"On the ground of non-depend
the report of special examiner t
property and labor."

Under the law this rejection b
seventy-one years old, is without
labor.

Following the uniform course o
the House with a recommendatio

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 155.

DAVID A. LIPPY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Craig, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1019.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1019) granting a pension to David A. Lippy, submit the following report:

That David A. Lippy enlisted in Company F, Twenty-second Pennsylvania Cavalry Volunteers, February 25, 1864, and was discharged October 31, 1865. That he claimed a pension August 10, 1877, for saber cut across left knee, wound of left knee from spent ball while carrying the mail, and failure of eye-sight commencing about three months before his discharge. That he was in the nine months' service prior to this time, from August 5, 1862, to May 20, 1863, in Company E, One hundred and twenty-sixth Pennsylvania Volunteers. The records of the Surgeon-General's Office show him in hospital, Chambersburgh, Pa., May 2, 1864, with contusion; returned September, 1864. Entered hospital, York, Pa., October 4, 1864, with hernia and rheumatism; returned to duty October 28, 1864. There is no record of his alleged disabilities.

Four examinations by board of surgeons, the last one in 1886, show disability from wound and saber cut nothing, but disability from disease of eyes, third grade, and the evidence is that he is now in a deplorable condition.

The claimant and his second lieutenant, B. F. Hasson, and several comrades of his last service, testify that he incurred his disease of the eyes in the summer of 1865. C. H. Davis, special examiner, took a large amount of testimony showing soundness and health and freedom from sore eyes prior to enlistment, and showing his disability from sore eyes since discharge, but he found two witnesses, one John C. Anderson, a brother-in-law of claimant, who testifies he was a member of same company in claimant's first service, and that his eyes were weak; that he wrote letters for him for that reason; that he was detached as a wagon-guard for the reason his eye-sight was not good. That he first knew claimant's eyes were not good while in the nine months' service. The other witness, J. B. French, says there were two Lippy's in that company, one of whom had sore eyes—he can't tell whether it was David A. Lippy or his brother George. The fact is, however, there was but one Lippy in the company.

Special Examiner C. H. Davis, who took the bulk of the testimony at claimant's home, recommended the pension. He further said claimant was very nervous and illiterate.

The Pension Office, and the Secretary of the Interior on appeal, refused to adopt the theory that claimant and his witnesses made a mistake as to time of contraction of sore eyes, and rejected the claim January 28, 1887, for the reason that there is no record of his disability, claimant has furnished no evidence of gun-shot wound of left knee, and no competent evidence that the alleged saber-cut of left knee was received in the line of duty. Testimony elicited by special examiner shows disease of eyes existed prior to entering service in which disability is alleged to have been contracted.

Your committee find that it is established that claimant entered his first service free from disease of the eyes, that he contracted this disease while in the service, and notwithstanding contradictions in the testimony as to time, give the claimant the benefit of the doubt and recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 156.

FLORIAN LISCHEWSKY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Craig, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5997.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5997) restoring to the pension roll the name of Florian Lischewsky, submit the following report:

That it appears the said Florian Lischewsky was a private in Company C, Twenty-ninth Regiment of New York Volunteers, having served therein from June 4, 1861, to June 20, 1863, having been discharged for expiration of his term of service; that while in said service and line of his duty in the summer of 1862, from excessive marching he contracted varicose veins of both legs, for which he was granted a pension by certificate No. 133444, May 8, 1875; that he drew his pension for about two years when it was stopped and his name stricken from the rolls on the report of a special examiner of the Pension Bureau, on the ground, as alleged, that it was not shown that his varicose veins originated in the service; that your committee finds that the evidence (which has not been impeached) filed by said soldier in his claim shows that his said disability did originate in said service and line of duty.

Following is a synopsis of the evidence filed by said soldier, both in his claim for the original pension and in his claim for restoration of his pension.

In the original claim for pension, Fritz Decker, second lieutenant of his company, testified that about the 1st of June, 1862, between Fairfax Court House and Cross Keys, Va., the said Lischewsky, from continuous marching for several days in succession, carrying heavy accouterments, contracted varicose veins of his legs, which troubled him afterwards more or less, while with the regiment, and existed at the time of his discharge, in June, 1863; that he well remembers him in the service, and that he got his varicose veins of legs as stated; that he knew him before he enlisted, and that he was then sound in his legs.

Dr. Theodore Roth testified that he prescribed for the said soldier off and on from the time of his discharge from the Army, in the summer of 1863, to the present time (March, 1874), for varicose veins of both legs below the knees, and he has been badly affected in his legs with varicose veins, which have disabled him for following his customary labor; that he enjoyed good health before and up to his enlistment; witness was then acquainted with him, and had he had the bad veins of legs then believes he would have known it; that he was of good and temperate habits.

That in the claim for restoration, Dr. George H. Kobler testified that he has been his physician for the past six years, and knows that he has suffered with varicose veins to such an extent as to disable him for doing any manual labor whatever.

Frank Niedel and Lewis Troutwein testified that they knew him from fifteen to seventeen years and ever since September 4, 1875 (the date to which his pension was last paid); have seen him about every day, and they know he has been afflicted with varicose or enlarged veins of his legs, which have disabled him for any kind of manual labor, etc.

William Grossman testified that he was a comrade in his company and regiment, and that from long and excessive marching in the summer of 1862 in said service he contracted varicose veins of his legs, and after the battle of Bull Run (the last of August, 1862) the major, having two horses, took him on one of them on account of his varicose veins. Witness saw his swelled veins in said service, and knew him before he enlisted and he had no swelled veins of legs then; that they were all stripped down and thoroughly examined before they were mustered into said service.

Birghardt Wallenhaupt testified that he and the said Lischewsky enlisted in said company and regiment at the same time, and they were all thoroughly examined and he was accepted in said service as a sound man and was then free from any swelled veins of his legs; that about the summer of 1862, before and after the battle of Bull Run, Virginia, from excessive marching day and night he contracted varicose or swelled veins of his legs, and he complained afterwards of his weak and sore and swelled veins of his legs, and was not able to do duty all the time; witness and he slept together for some time in said service and he several times showed witness his legs of swelled veins below his knees, and he suffered with them at the time of his discharge in June, 1863.

The committee see no reason to discredit the testimony recited, and therefore believe that said invalid soldier should have his pension restored to him. We therefore report the bill favorably and recommend its passage.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 157.

MARTHA McILWAIN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Craig, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4765.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4765) granting a pension to Martha McIlwain, submit the following report:

Robert J. McIlwain, late sergeant Company K, Thirty-seventh Regiment Pennsylvania Volunteers, was mustered into the service April 20, 1861, and was discharged November 29, 1862. He died May 15, 1883, "from prostration, the result of a complication of physical troubles incident to a neuralgic stump," as is attested by the attending physician.

The evidence in this case is extremely full, and a careful consideration of the same reveals the following:

This soldier went into the service a strong and hearty man, and at the second battle of Bull Run was severely wounded in right leg by gunshot, and amputation was rendered necessary.

Soldier drew a pension up to the date of his death for the loss of limb, and his widow applied for but was refused a pension, "because the death of the soldier was not due to the service, but to his own negligence." The evidence of soldier's neighbors is clear on this point, and all goes to show that the soldier was in the habit of taking morphia to alleviate the terrible pain he endured from his stump, which is by many said to have been a poor amputation, and that he accidentally took an overdose, which caused his death.

Your committee, in view of these facts, think that this claimant is undoubtedly entitled to a pension, and they therefore recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 158.

ANN E. LAMBURG.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Craig, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4763.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4763) granting a pension to Ann E. Lamburg, submit the following report:

The Committee on Pensions, to whom was referred the bill (S. 1902) granting a pension to Ann E. Lamburg, have examined the same, and report that the records in this case show that claimant is the widow of George W. Lamburg, late a private in Company I, Seventy-eighth Regiment Pennsylvania Volunteers, who enlisted September 16, 1861, and was discharged November 4, 1864, by reason of disease of the ears, which made him deaf, said disease having been contracted by him in the line of his duty, and for which said soldier was pensioned November 5, 1864.

The records show, further, that the soldier was employed in sweeping a railroad bridge, when a train approached him from behind, and the engineer whistled several times to notify him of danger, but because of his deafness he did not hear the signal and was run over and killed.

In this case the deafness is clearly shown to be due to disease contracted while the soldier was in the service and in the line of his duty, and his death is clearly attributable to the deafness; therefore, taking into consideration all the evidence on file in this case, the committee believe it to be their duty to report in favor of this bill and recommend its passage.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 159.

DANIEL SOBER.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Craig, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5885.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5885) granting a pension to Daniel Sober, submit the following report:

That Daniel Sober enlisted September 1, 1864, in Company H, Fifth Pennsylvania Heavy Artillery, was discharge l June 13, 1865, and claims a pension for nervous paralysis, result of intermittent fever contracted October 1864, at Bull Run, Virginia. The claim was rejected on the ground of "inability to show that paralysis resulted from intermittent fever." The contraction of the fever is clearly shown by witnesses and record. Company records show November 28, 1864, "febris remittent;" report of medical examining board shows that "muscles of the arms are affected with constant tremor or paralysis agitans interfering to a very a great extent with the use of his hands."

Examination by Drs. William M. Bryan and W. W. Leech in spring of 1889, filed with case, show:

> Found him in a sitting position, his hands and arms in extreme agitation, caused by successive involuntary contraction and relaxation of the muscles of those members; his body and legs were affected in similar manner, though less degree. The position of legs had to be repeatedly changed in order to have relief. The saliva was trickling from his mouth. He could stand, his body inclining forward, and could change his position, shoving his feet along the floor a few inches at a time. He is not only unfit to do any work himself, but a great care and burden to his family.

He has no medical evidence showing connection between the fever of the service and the paralysis. The testimony of his wife is that he concealed his first symptoms of nervous twitching, which existed when he came home, through sensitiveness.

Affidavit of William Shearer, a neighbor, says he noticed when in claimant's blacksmith-shop early in spring of 1866, the nervous twitching of his muscles; that while working the piece of iron would rattle sometimes on the anvil with the tremor of hand and arm; that this gradually grew worse until his present helplessness.

Affidavits of E. M. Duff, Peter Cline, and William M. Geary state same in substance, but do not go so far back with beginnings of the paralysis.

This case was in charge of special examiners three times. G. P. Smith first reported adversely, but in his second report recommended that pension be granted, giving claimant benefit of the doubt. This was in 1887.

In 1888 C. H. Davis examined it specially, taking testimony as had been done in former examinations, and reported in favor of granting the claimant a pension under all the circumstances. He says the excellent character of the witnesses, the claimant's and his wife's high character preclude the idea of any attempt to falsify, and that any one would be convinced of their honesty and conscientiousness in not making excessive or exaggerated statements.

Your subcommittee saw the claimant at his home last fall, and from the evidence of Col. S. M. Jackson, a brave soldier and neighbor, he is satisfied that the claim is a meritorious one.

Your committee deem it their duty to recommend the granting of a pension to the beneficiary.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 160.

DAVID DEAN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Craig, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5886.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5886) granting a pension to David Dean, submit the following report:

That David Dean enlisted in Company A, One hundred and fifth Pennsylvania Volunteers, February 26, 1862, and was discharged March 27, 1863. He filed claim for pension April 2, 1888, for convulsions and fits contracted about December 1, 1862, near Fredericksburgh, Va. Pension rejected on the ground of existence of disability prior to enlistment as per certificate of discharge. His captain, W. J. Clydie, signs discharge, in which he says: "Cause, epileptic fits; said soldier has been subject to fits for several months, and very severe." Wm. Watson, regimental surgeon, says on same discharge:

> Incapable of performing duties of a soldier because of epilepsy. He was subject to this disease prior to enlistment. During the last three months the paroxysms have become more frequent and violent. I have seen him have two convulsions.

Affidavits of A. H. Murray, Christopher Keslar, Isaac M. Delp, comrades, say he was sound and healthy when he enlisted, and did duty until, without previous warning, about December 1, 1862, when, the weather being cold, and from wet and muddy marches and exposure, he suddenly became prostrated with convulsions, foaming and frothing at mouth and working in spasms all day.

Affidavits of David and John Timlin, Thomas Q. Adams, James Kennedy, George Noel, Henry C. Schock, Jackson Piper, James Kennedy, Josiah Blerl, T. T. Adams, George Weaver, and Michael Shrock, all testifying to knowledge and fact of his prior soundness and health and freedom from epileptic fits.

Your committee, having examined this case, deem it their duty to report in favor of a pension for this soldier.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 161.

GRANTING A PENSION TO GEORGE L. BEIGHLEY.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CRAIG, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3058.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3058) granting a pension to George L. Beighley, submit the following report:

That George L. Beighley was drafted about November 6, 1862; that he reported and was taken to Camp Howe, Pittsburgh, Pa., where he was assigned to Company D, One hundred and sixty-ninth Pennsylvania Regiment; that before he was mustered and enrolled in said company he took fever and ague, and was sent to the hospital, from which he was sent home about December 1, 1862, as unfit for the service.

Several witnesses testify to his having been drafted, among whom is the lieutenant of Company D, One hundred and sixty-ninth Pennsylvania Regiment.

In 1869 he filed his claim for pension, alleging contraction, while in Camp Howe, November, 1862, of fever and ague and resulting spinal affection. His claim was rejected September 1, 1887, because his name did not appear on the rolls of Company D, One hundred and sixty-ninth Pennsylvania, and he could show no discharge.

The affidavit of William Simmons, lieutenant Company D, One hundred and sixty-ninth Pennsylvania, says he was drafted, was assigned to his company; that he was sick in said camp and was sent to the hospital.

James Cribbs knew claimant for thirty years. Knew of his sickness at Camp Howe. Was drafted also and was in camp with claimant. That said Beighley was a sufferer confined to the house and the use of crutches for five or six years after the war for a great part of the time; that it affected his mind; that he has been affected with fever and ague and disease of the spine ever since; his mind, however, being better.

Elias P. Beily says Beighley was sick nine years after discharge with fever and ague and spinal affection and rheumatism. Certificate of steward of almshouse that he was an inmate of said institution in 1863 for insanity, poverty, and attempt to hang himself. He is now in charge of and supported by Mercer County, where he has been for several years.

Your committee believe it to be their duty and do report favorably and that a pension be granted.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 162.

MARY BAILEY.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CRAIG, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4046.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4046) to pension Mary Bailey, have had the same under consideration and beg leave to submit the following report:

Mary Bailey is the mother of Robert G. Davis, who enlisted as private in Company B, Ninety-ninth Regiment Pennsylvania Volunteers, in July, 1861, and died of disease contracted in service June 27, 1862. Her claim for pension has been rejected by the Pension Bureau on the ground that claimant was not dependent upon the soldier at time of his death, as appeared during special examination of the case by claimant's own admissions. From this action an appeal was taken to the Secretary of the Interior, who under date of September 24, 1889, affirmed the action of the Bureau for like reason.

The Secretary in said decision uses the following language:

> It may be stated that a large proportion of the evidence filed by the appellant relative to her condition of poverty, dependence, and distress existing since the death of her second husband, and many years subsequent to the death of her son, the soldier, has no bearing upon her claim for pension. Such evidence was evidently filed under the misapprehension, so common in such cases, that the present condition in life of the appellant would afford ground for pension, whereas the law only recognizes the condition of dependence existing at the date of the death of soldier, and however much the natural feelings of sympathy and compassion may be aroused for the present poverty-stricken and helpless condition of this aged and unfortunate appellant, it is not within the power of this Department to afford her the relief she asks, simply for the reason that it is not authorized by the law.

Congress has on all occasions liberally responded to requests for relief in this class of cases, and believing the case under consideration to be meritorious, your committee report favorably on the accompanying bill and ask that it do pass, amended, however, by striking out all between the word "volunteers," in line 6, and the word "subject," in line 9.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 163.

MINNIE A. BAILEY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Craig, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 247.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 247) granting a pension to Minnie A. Bailey, submit the following report:

A bill identical with this, proposing to put this claimant on the pension roll at $12 per month, has previously passed Congress, but reached the President too late for executive action, and therefore failed to become a law.

The applicant is a daughter of Oscar M. Bailey, who was a private in Company F, Fifteenth Connecticut Volunteers, and who died May 8, 1863.

A pension was granted to the widow of the deceased soldier, and at her marriage the pension was paid to the applicant until she was sixteen years of age. She is now thirty years old and has been lame from two years since birth from a disease of the hip-joint. She is unable to earn a living, and is dependent upon others for her support.

Your committee believe this to be a just and meritorious claim, and therefore recommend the passage of bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 164.

MATTIE W. HOUSE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2615.]

The Committee on Pensions, to whom was referred the bill (H. R. 2615) granting an increase of pension to Mattie W. House, have considered the same and report as follows:

Said bill is identical with House bill 10664 of the Fiftieth Congress, which was reported favorably (with an amendment, striking out the word "fifty" in line 6, and inserting in lieu thereof the word "forty") to the House in report No. 3935, second session, and your committee adopt that report (No. 3935) as applicable to this bill, and recommend that the bill do pass without the said amendment.

The Comittee on Pensions, to whom was referred the bill (H. R. 10664) granting an increase of pension to Mattie W. House, have considered the same and report as follows:

The husband of the claimant was appointed a midshipman at the Naval Academy July 23, 1864; was commissioned an ensign April 19, 1869; a master to rank from July 12, 1870, and a lieutenant in the Navy from August 24, 1873. After sixteen years of service he died at Georgetown, Colo., January 9, 1881. His widow, the claimant, is a pensioner at the rate of $25 per month and $2 for each of her two young daughters, aged eight and twelve years respectively.

She applies for increase to $50 per month, declaring that she has no property to afford her any income and that the tender years of her two children make it impossible for her to leave them to gain a livelihood. This throws the burden of their support upon her pension and a small amount which she may be able to earn.

The statements of many prominent people of Penn Yan, N. Y., where she resides, corroborates her assertions. Among these are John S. Shepherd, George R. Cornwell, Hanford Struble, and Andrew C. Harwick.

There are precedents for the allowance of increase to $40 per month in cases like this one. Your committee believe that an increase should be allowed, and therefore report the bill back recommending its passage, amended, however, by striking out the word "fifty," in line 6, and inserting in lieu thereof the word "forty."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 165.

THOMAS RILEY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4495.]

The Committee on Pensions, to whom was referred the bill (H. R. 4495) granting an increase of pension to Thomas Riley, have considered the same, and report:

The claimant was a private in Company L, Seventh United States Cavalry, from which organization he was discharged June 21, 1875, on account of loss of both hands by amputation, rendered necessary by frost-bite incurred in the service and line of duty. He is now pensioned for said disability at $72 per month under the act of June 16, 1880. There being some question as to his title to $100 per month under the provisions of the act of February 12, 1889, because of the fact that on one hand a thumb still remains, he prays that he be granted that rate ($100 per month) by special act.

Your committee have had the claimant before them, and can not see how the thumb now remaining can be of any use whatever to the claimant in the performance of manual labor, especially as that member is evidently considerably maimed or diseased. As the claimant seems fully as much disabled as a man with both hands entirely gone, your committee recommend that the increase prayed for be granted by the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 166.

HULDAH BURTON.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DeLano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3530.]

The Committee on Pensions, to whom was referred the bill (H. R. 3530) granting a pension to Huldah Burton, have considered the same and report as follows:

The name of claimant's late husband, Thomas Burton, appears on the rolls of Capt. Seth Pratt's company of Illinois volunteers as a musician, enrolled April 26, 1832, and being appointed drum major by Major Jacob Long, served in that capacity, with Long's "odd battalion of mounted volunteers detached for foot purposes," and was mustered out with the battalion May 28, 1832. This service was in the Black Hawk war.

The claimant asks a pension $20 per month, declaring that she is eighty years of age, entirely without property, and dependent upon charity for food and clothing.

In view of claimant's destitution and great age, your committee think the relief prayed for should be granted, and the passage of the bill is recommended.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 167.

STEPHEN COOPER.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3961.]

The Committee on Pensions, to whom was referred the bill (H. R. 3961) granting increase of pension to Stephen Cooper, have considered the same and beg leave to report:

The claimant served in Capt. S. Cooper's company, Missouri militia, from August 27 to October 25, 1814, war of 1812. He is now a pensioner under the act of February 14, 1871, at $8 per month. He asks an increase to $50 per month, declaring that he is now ninety-three years old and dependent upon relatives for the necessaries of life.

He states that his father and three cousins were killed and two other cousins wounded in said war; also that a large amount of property was taken from his family during said war, and nothing ever paid for it. He states he also served in 1832 in the Black Hawk war, under Captain Matison. Hon. Marion Biggs, Representative in Congress from the State of California, certifies to the high character and entire reliability of the applicant. Mr. Biggs has known the claimant for over twenty-five years. Believing this to be a deserving case your committee recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 168.

HIRAM WILBUR.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 16.]

The Committee on Pensions, to whom was referred the bill (H. R. 16) granting a pension to Hiram Wilbur, beg leave to report:

The records of the War Department show that the claimant served as a sergeant in Troop H, Second United States Dragoons, from July 23, 1836, to July 23, 1839, when honorably discharged by reason of expiration of term of service.

Isaac Le Roy testifies that claimant is seventy four years old, with no property of any kind and no means of support, and that he has to depend upon others for a maintenance. He is married and has a wife and three children.

The credibility of this witness (Le Roy) is vouched for by Hon. Charles Tracey, Representative in Congress from the State of New York.

There are precedents for the allowance of pension at $20 per month in cases like this one.

Your committee recommend the passage of the bill.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 169.

HENRY S. MORGAN.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DE LANO, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4202.]

The Committee on Pensions, to whom was referred the bill (H. R. 4202) granting a pension to Henry S. Morgan, have considered the same and report as follows:

The claimant was a private in Captain Davis Lane's company of Georgia militia, from June 2, 1836, to July 17, 1836, and served in the Creek Indian war. He asks the same pension as is allowed by law for service in the war of 1812.

Mr. McRae, Representative in Congress from the State of Arkansas, personally knows this claimant and vouches for his old age, inability to labor, and want of sufficient support or income to afford him an adequate means of support.

Your committee believe this to be a proper case for relief by special act, and recommend the passage of the bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 170.

GREEN B. LEE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4854.]

The Committee on Pensions, to whom was referred the bill (H. R. 4854) granting a pension to Green B. Lee, have considered the same and report as follows:

The claimant was a private in Capt. John W. Fowler's company of Georgia volunteers from May 15, 1838, to June 28, 1838. This company was attached to Col. William Turk's second regiment, and was ordered into service by Maj. Gen. Winfield Scott, and served in the Florida Indian war. He asks the same pension as is allowed by law for service in the war of 1812.

The claimant is personally known to Mr. McRae, a Representative in Congress from the State of Arkansas, who vouches for the old age and disabled condition of the claimant; also that the claimant is not in possession of sufficient property or income to afford him adequate support.

Your committee believe the relief prayed for should be granted, and respectfully recommend the passage of the bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 171.

GEORGE DODGE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DeLano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4789.]

The Committee on Pensions, to whom was referred the bill (H. R. 4789) granting a pension to George Dodge, have considered the same and report as follows:

The claimant was a private in Troop D, First United States Dragoons, from August 14, 1841, till August 14, 1846. He was discharged the service at Dragoon Camp, near Fort Leavenworth, Mo., on the date last above named on account of expiration of term of service. His claim for pension under the Mexican war service act of January 29, 1887, was rejected by the Pension Bureau on the ground that he did not serve in Mexico en route thereto or on the frontier thereof during the war with that nation.

It appears, however, that claimant was granted a land warrant for his honorable services, and the accounting officers of the Treasury allowed him three months' extra pay for "service in the Mexican war." The claimant declares that when the organization to which he belonged moved to the seat of war, he did not intend to remain in the service, and he was left at Fort Leavenworth by direction of his colonel. During the months of July and August (1846) he was in the adjutant and quartermaster's employ, assisting in the mustering in and sending forward of Colonel's Doniphan's and Price's regiments Missouri volunteers. When these regiments moved he was sent out under orders as a guide to select camping grounds, and in this capacity he made two trips as far as the old Santa Fé crossing of the Arkansas River.

The claimant is now seventy-five years old and his standing for truth and veracity is vouched for under oath by his neighbors John Shafer, jr., and Adam Ellis. The bill provides for a pension for claimant at $8 per month to begin January 29, 1887, the date of the passage of the Mexican war survivors' act above referred to.

In view of the facts recited herein your committee recommend the passage of the bill.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 172.

MARY M. GIBSON.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5488.]

The Committee on Pensions, to whom was referred the bill (H. R. 5488), granting an increase of pension to Mary M. Gibson, widow of Commander William Gibson, have considered the same, and report as follows:

Said bill is identical with House bill No. 7247 of the Fiftieth Congress, which was reported favorably to the House in report No. 1636, first session, and your committee adopt that report (No. 1636) as applicable to this bill and recommend that the bill do pass.

The Committee on Pensions, to whom was referred the bill (H. R. 7247) granting a pension to Mary M. Gibson, have considered the same, and report as follows:

By this bill it is proposed to pay Mary M. Gibson, widow of the late Commander William Gibson, of the U. S. Navy, a pension of $50 per month in lieu of any pension which she may hereafter receive.

Commander William Gibson, U. S. Navy, was born in Baltimore, Md. He accompanied, when only twelve years of age, in 1837, Capt. Isaac McKeever, U. S. Navy, on the cruise of the U. S. S. *Falmouth* in the Pacific, and became purser's clerk to Purser Robert Pettitt, and was so rated until the end of the cruise in 1840.

The following from the records of the Navy Department shows his subsequent history in the naval service:

[Abstract of the orders issued to William Gibson, late commander, U. S. Navy.]

Was appointed a midshipman on the 11th of February, 1841.

1841.—Apr. 30, to the *Delaware*.

1844.—Mar. 13, detached and leave; May 30, ordered to the *Lawrence*.

1845.—Mar. 4, transferred to the *Potomac;* Dec. 10, detached and granted leave.

1846.—May 30, ordered to the *Reefer*.

1847.—Jan. , ordered to naval school for examination; Aug. 5, detached and ordered to the home squadron; Aug. 10, promoted to passed midshipman.

1848.—Aug. 5, detached from the *Vesuvius*; Nov. 29, to the Coast Survey schooner *Ewing*.

1852.—May 3, detached and to coast schooner *Madison*, Coast Survey; Oct. 26, detached and to Coast Survey Office; Dec. 18, detached and ordered to steamer *John Hancock*.

1855.—Sept. 14, promoted to master; Sept. 15, promoted to lieutenant.

1856.—Mar. 19, returned from the *Vincennes* and granted leave; Apr. 18, ordered to Coast Survey steamer *Hetzel*; Aug. 30, detached and ordered to special duty, Washington.

1858.—July 28, detached and ordered to the *Sabine*, Aug. 14.

1859.—May 9, detached and ordered to special duty, Washington.

1866.—Aug. 15, ordered to
1867.—Feb. 7, detached and
on the retired list; Apr. 27.
duty in the Hydrographic Of
1868.—May 12, ordered to
1870.—Oct. 1, detached and
permission to remain abroad
1879.—Jan. 29, restored to t
July, 1862; Mar. 5, commissio
to duty with Hydrographic O
1882.—Apr. 29, detached and
waiting orders.
1883.—Feb. 21, granted six
1886.—July 29, ordered to
1887.—Placed on the retired
age.
Died at Atlantic City, N. J.,
Total sea-service, 18 years 5
Taken from the records of the

FEBRUARY 13, 1888.

The following relates more ful
of this officer:

Commander William Gibson, U
service, died at Atlantic City, N.
induced by malaria, contracted
yard. Commander Gibson was
11, 1841, and attained the rank
gun-boat *Reefer* in the Gulf of M
with the batteries and troops in
basco.

In 1849, while serving on the C
mutinous and deserting boat's c
rescued, and resuscitated from d
Coast Survey for "characteristi

While commanding the schoo
Niphon in the Japan Sea and th
that vessel, and Commander Ro
"zeal, his energy, and the hardsl
fulness was in inverse proportio

In July, 1862, he attained the
His services during the

thanked by Major-General Newton for 'zealous and able co-operation with the land forces in the joint expedition to St. Mark's.'"

In October, 1866, he rode out a hurricane near the Bahamas, and was thanked by the British Government for aid rendered those islands.

In view of the long and meritorious services of Commander Gibson, marked by "characteristic gallantry," and of great benefit and value to his country, and the fact that his death resulted from disease contracted in the service of the United States, and in view of established precedents in the case, your committee report this bill favorably, and recommend its passage.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 173.

JOHN CURRAN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3404.]

The Committee on Pensions, to whom was referred the bill (H. R. 3404) granting an increase of pension to John Curran, have considered the same and report as follows:

Said bill is identical with House bill 11919 of the Fiftieth Congress, which was reported favorably to the House in Report No. 4040, second session, and your committee adopt that report (No. 4040) as applicable to this bill, and recommend that the bill do pass.

[House Report No. 4040, Fiftieth Congress, second session.]

The Committee on Pensions, to whom was referred the bill (H. R. 11919) granting increase of pension to John Curran, have considered the same and report as follows:

The claimant was a private in Company A, Third United States Artillery, and served in the war with Mexico. He is now a pensioner at the rate of $8 per month. He asks an increase to $25 per month. The testimony which he furnishes shows that he is sixty-two years of age, is in very feeble health, and with no property or income save his small pension. His right arm is useless from the results of rheumatism. His family physicians, Drs. F. L. Powell and Joe Barkley, of Leesburgh, Ky., testify to his physical and financial condition.

Your committee recommend the passage of the bill.

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SAMUEL L. DARK.

FEBRUARY 2, 1891.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DE LANEL, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2536.]

The Committee on Pensions, to whom was referred the bill (H. R. 2536) granting a pension to Samuel L. Dark, have considered the same and beg to submit the following report:

The claimant was a sergeant in Captain John Stennett's company of Illinois mounted rangers from June 4, 1832, to September 4, 1832, and served on the frontier in the Black Hawk war. He asks a pension at $30 per month.

A great number of the citizens of McDonough County, Ill., petition Congress to grant the relief prayed for, and state they have known claimant many years and know him to be an upright, honest old man, with very infirm health and almost blind; also that he has a helpless family on his hands and is in very limited circumstances.

Your committee recommend the passage of the bill with the following amendments: Strike out the name "G" in line 5 and substitute therefor the name "L."

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 175.

W. S. YOHE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2352.]

The Committee on Pensions, to whom was referred the bill (H. R. 2352) granting a pension, to W. S. Yohe, submit the following report:

The claimant in this case enlisted on the 29th of June, 1837, at Jefferson Barracks, Mo., in Company H, Colonel Taylor's regiment of infantry, U. S. Army. The regiment was ordered to Florida, where they arrived in November of the same year, and soon after engaged in a battle with the Seminole Indians at Lake Okeechobee, losing one-fourth of their entire command. He was honorably discharged at Fort Macomb on the 29th of June, 1840, by reason of expiration of term of service, and in the September following re-enlisted at St. Louis for five years. Being again discharged on the 21st day of September, 1855, he entered the Quartermaster's Department at Forth Leavenworth, where he remained until the breaking out of the Mexican War. He then raised a company for service in Mexico, but was unable to get them mustered in on account of the regiment's being full.

The following extract from a letter of General Phil. Kearney shows the high esteem in which he was held by that officer:

> From the knowledge I had of you as orderly sergeant of the company I can, with pleasure and security, repeat my highest commendation in favor of your integrity, activity, regularity, and intelligence. You would prove a valuable agent of, or director for, parties under the quartermaster of any of the new posts. As your papers will show up to the time of your discharge in the fight of 1845, you had obtained an unblemished character. I wish you would show this letter to any person, military or civil, where there is a vacancy that would be suitable for you.
>
> I thank you kindly for your expression of sympathy at the loss of my bridle arm. It is a great deprivation, of course, but I suffer no pain from it, and I can accomplish almost the same, mounted or on foot, as before.

This old veteran is now nearly 75 years of age, and, in view of his long and faithful service, your committee recommend the passage of the bill.

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[illegible] HOUSE OF REPRESENTATIVES. { REPORT
[illegible] { No. 176.

SAMUEL ADAMS.

FEBRUARY [illegible], 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DE LANO, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3962.]

The Committee on Pensions, to whom was referred the bill (H. R. 3962) granting an increase of pension to Samuel Adams, have considered the same and report as follows:

The claimant was an ordinary seaman on board the United States ship *Savannah*, and served in the war with Mexico. He is now a pensioner at the rate of $8 per month. He asks an increase to $24 per month, and asserts that he is sixty-five years of age and totally disabled by reason of partial paralysis; that he can walk only with much difficulty and there is no hope of improvement in his condition, but on the contrary he is continually growing more feeble and helpless.

Drs. T. M. Todd and Martin Schwatel testify that claimant's physical condition is as stated, and a number of persons, including some of the county officers, certify to the good character of the claimant, and also that he is entirely without any property or means of subsistence other than his said pension of $8 per month, and that unless granted the relief contemplated by this bill, he must remain dependent upon public and private charity for support.

Your committee recommend the passage of the bill with the following amendment: Strike out the words "twenty-four" in the sixth line of said bill and substitute therefor the word "thirty," so as to grant the claimant a pension of $30 per month.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 177.

WILLIAM R. SCURLOCK.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. NORTON, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5162.]

The Committee on Pensions, to whom was referred the bill (H. R. 5162) granting a pension to William R. Scurlock, have considered the same and beg leave to report:

The claimant was a private in Company H, Alabama Mounted Volunteers, Creek war, from October 26, 1837, to April 10, 1838. He prays a pension at $12 per month.

In his prayer for relief the claimant declares he is seventy-three years old and very deaf; that his wife is also very old, and, as their children are all dead, they have no one to look after or care for them in their old age.

There are many precedents for this legislation, and your committee recommend that the bill do pass, with the following amendment: Strike out the word "twelve," in the eighth line of said bill, and insert in lieu thereof the word "twenty," so as to grant him a pension at the rate of $20 per month.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 178.

ROBERT HILL.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Norton, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5161.]

The Committee on Pensions, to whom was referred the bill (H. R. 5161) granting a pension to Robert Hill, have considered the same and report:

The claimant was a bugler in Capt. W. H. Storey's company, Second Georgia Mounted Volunteers, Florida war, from October 5, 1837, to May 12, 1838. He asks a pension at $12 per month.

The claimant is now sixty-nine years of age, in feeble health and straightened circumstances. These facts are certified to by the gentleman who introduced the bill in the House.

Your committee recommend the passage of the bill with the following amendment: Strike out the word "twelve" in the eighth line of said bill, and substitute therefor the word "twenty," so as to allow the claimant a pension of $20 per month.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 179.

UNITED STATES COURTS OF MINNESOTA.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Sherman, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 4587.]

In the act admitting the Territory of Minnesota to the Union. the State was made a judicial district with terms of the district and circuit court at St. Paul, the capital. This has remained unchanged, except that a term of the district court is held at Winona, annually, although the State has attained a population of 1,117,798, as shown by the last census, and now estimated at nearly 1,700,000. In railroad mileage, Minnesota occupies the fourth place in the list of States, all the leading Northwestern roads having extended their lines into her territory. The attention of the committee has been called to the fact that all of the railroad corporations doing business in the State, with the exception of three, have either been chartered in other States, or by Congress, so that actions brought against them can be removed to the circuit court of the United States. This is evidently done to a great extent, as the calendars of the last two terms of the circuit courts show sixty five railroad cases alone. When it is borne in mind that litigants and witnesses have to come as far as 400 miles from the north, and 250 miles from the west, to attend the court, the necessity for the present bill is apparent. This bill is in accord with the policy adopted in other States, to divide the State into divisions instead of creating new districts. It makes all causes triable in the division where they arise, or where the defendant resides. It creates no new offices. It will have a tendency to decrease the expenses of the Government rather than to increase them. It will dispense with the necessity of bringing Government witnesses from the extreme parts of the State to the capital, these to be kept at the expense of the Government for weeks and months awaiting trial, as is now the case.

The committee conforming with the wish of the Congressional delegation from Minnesota recommend that the bill be amended by striking out "Freeborn" in line 7 and "Steele" in line 16, and inserting the word "Steele after "Fillmore" in line 8, and "Freeborn" after the word "of" in line 10.

With these amendments the committee recommend the passage of the bill.

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Mr. MORRILL, from the

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The Committee on Inv
(H. R. 4205) granting a p
lowing report:

The claimant in this ca
a corporal in Company 1
teers. He enlisted at Pit
for three years, and re-en
and was discharged Augu
in the service he received
fected his health during th
who attended him in his la

I was called to attend Mr. L.
He died September 29, 1886. C
swollen and inflamed thigh fro
claimed by him to be an old gu
eral army. His thigh continu
from effect of same up to or abo
ing his death. The original ca
The immediate cause dysentery
wounds at time of attack of dys

The case is rejected in
immediate cause of death

It seems to your commit
soldier not received the g
and vitality, he might hav
dier drew a pension from
account of the wound.

Your committee therefor

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 181.

ELI J. YOUNGHEIM.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Morrill, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4821.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4821) granting a pension to Eli J. Youngheim, submit the following report:

The claimant in this case enlisted August 1, 1861, in Company A, Sixth Kansas Cavalry, and was discharged November 15, 1864. He filed his declaration for pension April 5, 1875, alleging that he was struck by a spent ball on the left ankle, causing lameness. Jacob A. Heany, Jacob H. Bartles, and Alfred N. Jerrold all testify to the incurrence of the injury. There is abundant evidence to show that it continued to the present time. The examining surgeon at Emporia reported July 27, 1875, and January 9, 1878, that he found him totally disabled. Examining board at Emporia, March 7, 1883, make the same report. On the other hand it is shown that the soldier had suffered from a fever-sore on the same leg prior to enlistment. The fact still remains that the man was sufficiently strong and able-bodied to be accepted in the service; that he served his country faithfully for three years and two months; that he received an injury from which he has suffered ever since, and that now he is disabled. It is highly probable that if he had never suffered prior to enlistment from the fever-sore of the leg, or that some comrade who was perfectly sound had received the same injury, that no serious result would have followed from it. It is equally probable that if the soldier had not received the injury in the service that he might have gone through life comparatively well. It seems to your committee hardly honorable for the United States Government, after accepting this man in the service and receiving the benefit of his service for over three years, during which time he was frequently exposed to the dangers of the battle-field and suffered all the hardships and privations of army life, to plead now that he was not sound before enlistment, and therefore not entitled to a pension.

Your committee therefore recommend the passage of this bill.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 182.

LEVI M. LINCOLN.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MORRILL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3108.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3108) granting a pension to Levi M. Lincoln, submit the following report:

The claimant herein enlisted in a company of Missouri State Militia Volunteers, with N. N. Green, captain, and while serving in said company at Dallas, Mo., while holding said place as a military post, the company was surprised by the rebel forces under Colonel Jeffrie, and nearly all of said company, including claimant, were captured. This was about August, 1862. Claimant was paroled and was never afterwards exchanged. About April, 1863, claimant was employed as a scout and guide by Col. John B. Rogers, commanding post Cape Girardeau, to guide and lead scouting parties sent out from said post. He continued in said service till about the month of December, 1863, when he was employed by Captain Montgomery, Company E., Sixth Missouri Cavalry Volunteers, then in command of post Dallas, Mo. As such he performed a great deal of service, frequently extending his trips to the Arkansas line.

About the month of February, 1864, while on horseback, with others, in pursuit of a party of guerrillas, in passing through a corn field claimant was struck in the left eye by a piece of corn-stalk knocked off in the rapid passage of claimant's horse, resulting in the almost total destruction of the sight of said eye. He continued in said service until about September 1, 1864, when he joined the company of Lieut. Erich Pope, as guide and volunteer soldier, at Pilot Knob, and about September 29, 1864, while in action driving the rebels back, he received a gunshot wound in his right fore-arm. He was captured and again paroled.

He has not applied for pension to the Pension Department, as he was not regularly enrolled in the United States service. The facts above set forth are substantiated by affidavits of neighbors and those who were with claimant at the time these disabilities were incurred.

The committee recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 183.

ALLEN McCOWAN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Morrill, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2351.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2351) granting a pension to Allen McCowan, submit the following report:

The claimant enlisted in October, 1864, in Company A of the Brown County Battalion of Kansas Militia. The company was soon after called into service in repelling the raid of the rebel General Sterling Price. While at Wyandotte, Kans., in service, he was detailed to go to Kansas City, Mo., for a supply of ammunition. After they had arrived at the place of destination, and while loading their wagon, a squad of cavalry rode rapidly by, frightening the team and causing it to suddenly wheel and upset the wagon, throwing claimant violently to the ground and rupturing an artery just above the knee. From this disability he has ever since suffered, and is now disabled from the performance of manual labor.

The facts as stated are fully substantiated by the affidavits of John B. Butterfield, George W. Montgomery, Samuel M. E. Cowan, and Dr. E. W. Bliss, all citizens of good repute in the communities in which they reside. Congress has repeatedly and, we believe, without exception granted relief by special acts in cases like this.

Your committee therefore recommend the passage of the bill.

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 184.

MATTHEW J. J. CAGLE.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MORRILL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2356.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2356) granting a pension to Matthew J. J. Cagle, submit the following report:

The claimant was a resident of Dickson County, Tenn., at the break-out of the late war. Being an out-spoken Union man he was compelled to leave home. He first went to Cairo, Ill., where he reported to General Prentiss, commanding the post, furnishing him valuable information regarding Fort Donelson and other points in Tennessee and Kentucky. Subsequently he was engaged as a scout for the army operating in Tennessee, in which capacity he performed valuable service. Authority was given him to organize the loyal men of his former neighborhood in a company. With these men he co-operated with the Union forces, guiding them through the mountains of the Cumberland River. Still later he was given authority to raise a company of cavalry, and received a commission as captain, which, however, was canceled because the general commanding the Department of the Tennessee did not favor the organization of independent commands at that time. He nevertheless continued in his work of scout and guide during the entire war, and as late as November, 1865, he was employed by the military authorities in arresting offenders against the law in Tennessee.

By reason of his services he was necessarily much exposed, often being compelled to secrete himself in the woods for days without shelter and little food. In consequence of these exposures he contracted rheumatism and diarrhea, for which latter he was treated at the post hospital at Clarksville, Tenn., in August, 1863. His eye-sight also became affected. A fall from his horse while on a scout near Louisa Furnace, Tenn., seriously injured his chest and side. To this injury he attributes the growth of a tumor which was cut out in 1887.

The valuable and patriotic services of this claimant are fully shown by the testimonials of the officers with whom he became associated and under whose orders he operated, now before your committee. That the general impairment of his health is due to the exposures and hardships incident to a scout's life, can not be questioned. Congress has granted relief by special legislation in cases of this class when shown to possess merit, and believing the case under consideration one of especial merit, your committee report favorably on the accompanying bill, and ask that it do pass, amended however by adding after the word "act," in line nine, the words "at the rate of twelve dollars per month."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 185.

JOHN CARTER.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Morrill, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4863.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4863) granting a pension to John Carter, submit the following report:

John Carter enlisted in Company D, Sixtieth Regiment United States Colored Troops, September 25, 1863, and was honorably mustered out October 15, 1865. His claim for pension on account of bayonet wound of left shoulder, injury to right hand, and wound of right ankle, has been rejected by the Pension Bureau on the ground of insufficiency of the evidence. The case has been specially examined by ten special examiners. From the evidence obtained by them it is clearly shown that claimant was sound when he entered the service. He is corroborated thereby in his allegations as to the duties performed by him at time of the incurrence of the several injuries, although the witnesses have no very distinct recollections as to the precise disabilities from which he suffered while in service. But that claimant became disabled from rheumatism before discharge is clearly shown, and that he has been a sufferer therefrom ever since, and that the same is now the principal cause of his deplorable condition, is fully established by the evidence procured during the special examination.

It also appears from the record that soldier had a severe attack of malarial fever just previous to discharge, which may have added to the disability resulting from rheumatism. The writer of this report has personal knowledge of the helpless condition of this old soldier, and that he is entirely dependent upon the charity of others.

Your committee are of opinion that the relief asked for should be granted, and therefore report favorably on the accompanying bill and ask that it do pass, amended, however, by striking out the word "twelve" in line 8 and insert therein instead the word "eighteen."

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 186.

SECTION FORTY-SIX HUNDRED AND NINETY-THREE OF THE REVISED STATUTES.

February 15, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Morrill, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 318.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 318) to amend paragraph 3 of section 4693 of Revised Statutes, and for other purposes, submit the following report:

The bill under consideration proposes to repeal the limitations prescribed against persons not enlisted in the Army of the United States, but who, while serving for the time being as members of the militia of any State, under orders of an officer of the United States, were disabled in consequence of wounds or injuries received in any engagement with rebels or Indians.

This class of persons was first provided for in section 9 of the act of July 4, 1864, which also made provisions for the widows or dependents of such persons as may have been killed in such temporary service, provided, however, a claim under said section was prosecuted to a successful issue prior to July 4, 1867. No further provisions for militiamen were made until March 3, 1873, when, under the act of that date, the limitation in this class of claims was further extended to July 4, 1874.

Several States of the Union organized their militia forces during the late war to aid the regular forces of the United States in the suppression of the rebellion. Among the States most forward in the organization of their militia forces were Kentucky, West Virginia, Kansas, and Missouri; in particular the latter.

Under an agreement entered into between the President of the United States and the governor of the State of Missouri the latter, under date of July 22, 1862, called into service all arms-bearing citizens of that State. About eighty regiments were organized, and although not constantly in the service, were more or less in the field aiding and assisting the forces of the United States in driving from the State the numerous raiding parties of the Confederates, as well as in the protection of Government property, and in particular in the carrying of the mails, which in those days were transported principally by stage.

A large amount of Government stores at Springfield, Mo., for the use of the armies operating in Missouri, Arkansas, and Indian Territory, were saved from capture by the Confederate forces under General Marmaduke by the militia of the State in January, 1863. Shortly thereafter a raid into the State by General Shelby proved unsuccessful by reason of the timely concentration of the militia forces. The services

of the enrolled militia during the invasion of the State by General Sterling Price are historical. The gallantry of these troops, as well as of the militia of Kansas, at the battle of the Little Blue, Missouri, in October, 1864, materially aided in the complete rout of the Confederate forces.

Not only were the movements of the Missouri militia controlled by the respective department commanders, who, it may be stated, were the respective commanders-in-chief of these forces under the agreement heretofore referred to, but, with the exception of a month in 1862, were furnished by the General Government with transportation, subsistence, and clothing.

The militia of other States—in particular during the first year of the war—did noble work for the cause of the Union; in fact were in many localities the only protection of the homes and property of those who sympathized with the Union or had joined the regular volunteer forces of the North, and on many occasions were called upon to meet in battle array the much-better organized forces of the Confederacy.

A serious outbreak of the then powerful tribe of Sioux Indians in Minnesota, in the summer of 1862, threatened destruction of life and property in a section of the country then unprotected by a military force equal to the emergency. The timely organization of the militia of the State, however, soon restored peace and safety to the community affected by this outbreak; not, however, without serious loss of life and other casualties among the ranks of the militia.

A number of State militiamen wounded in battle, as well as widows, etc., of others who lost their lives while in this temporary service, are now upon the pension-rolls, because they were apprised of their rights and were able to substantiate the same within the period prescribed by law, while many others, who were injured under like circumstances, or who lost upon the field of battle a husband or father, ignorant of their rights or unable to satisfy the Pension Office of the merits of their respective claims, are, because of the limitation heretofore referred to, shut out from the help which the Government so liberally bestows upon others of its defenders.

Every session of Congress this committee is called upon to take cognizance of a number of cases of this now barred class of claimants.

The merit of this class of cases is, as a rule, not questioned, and Congress has always granted the relief asked for.

Your committee fail to see the propriety in continuing in force the statute which necessitates special action in each individual case arising out of this service, and therefore report favorably on the bill and ask that it do pass with the following amendment: In line 5, section 1, strike out the words "of a State militiaman" and insert "arising under the provisions of said paragraph three, section forty-six hundred and ninety-three of the Revised Statutes."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 187.

ELIZABETH A. TUTTLE.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Morrill, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 801.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 801) granting a pension to Elizabeth A. Tuttle, submit the following report:

This bill proposes to place on the pension roll, at the rate of $12 per month, the name of Elizabeth A. Tuttle, an Army nurse.

Accompanying the bill are papers showing the appointment of Miss D. L. Dix as a nurse, and very flattering testimonials as to her faithfulness and ability in the discharge of her arduous duties. She was appointed in 1862, and served until the close of the war. She is now poor and has dependent upon her for support her mother, aged ninety-five years.

Your committee are of the opinion she should be pensioned, and therefore recommend the passage of the bill.

The Committee on In
(S. 806) granting a pens
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ment Kansas Volunteer
was discharged October 1
He made application
declaration that he contu
August, 1865. The claim
November 19, 1884, on th
bility from cause allege
swears that he is unable t
treated him when dischar
that the physician is dead
A. P. Brown, neighbor,

That he saw claimant when
said he had chronic diarrhea, a
Came back in 1880; he was sti
labor when he left in 1876, nor

This affidavit was filed
Jonathan Ruble, neigh
home from the Army; he
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Dr. J. V. Mott was "ca
ing from a very severe a
able to work much since."
The board at Fort Seo
diarrhea.
The claimant is now ov
tute circumst

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 189.

MARY E. NOLL.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MORRILL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 807.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 807) granting a pension to Mary E. Noll, submit the following report:

That they have had the same under consideration and adopted the following Senate report:

The claimant in this case is Mary E. Noll, widow of Philip Noll, who was a private in Company E, Ninth Regiment Missouri State Militia. Philip Noll enlisted February 15, 1862, and was honorably discharged from the service of the United States April 21, 1865. He made application for pension June 28, 1880, alleging in his declaration "that on or about May 15, 1862, at Columbia, Mo., while in line of duty, received injuries to the head, including a slight fracture of the skull, caused by the horse he was riding stumbling and throwing him, striking his head, causing pain, dizziness, and blind-staggers, especially after any physical exertion, entirely disabling him."

This claim was fully established to the satisfaction of the Commissioner of Pensions, and on August 6, 1881, the claim was allowed at the rate of $4 per month, commencing April 22, 1865, and ending January 31, 1885, the day of the soldier's death. On February 25, 1885, Mary E. Noll made application for pension—for herself, as widow, and the minor child, Monty L. Noll, who will be sixteen years of age October 2, 1894. This claim was rejected July 28, 1885, on the ground "that the evidence failed to show that the disease of which the soldier died originated in the service."

The claim of the widow was examined by special examiner, Mr. J. H. Hall, who says: "From the evidence, I am convinced that the soldier's widow's claim is meritorious and should be admitted."

The marriage of the claimant to the soldier is fully established, and is shown by a certified copy of the public records.

The births of the children are shown by a certified copy of the family record, as contained in the family Bible. The papers show that the soldier was very poor at the date of his death, and your committee, being of the opinion that the pension should be continued to the widow, recommend the passage of the bill.

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Mr. MORRILL, from the

The Committee on Inv
810) granting a pension t
That they had the sam
tion of the following Sen

Eliza A. Talbott, the claim
deceased, late of Company G,
death of the soldier he was dr
sion certificate number 213554
The soldier died at Sedan, C
1882.

J. M. Sharpless, the attendi
quainted with B. W. Talbott fr
and treated him at various dat
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in an abscess of the brain. E
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The soldier was pensioned fo
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"He was wounded *severely* in t
ber 21, 1863." The soldier left
from seven months to fifteen y
ple. The marriage of claima
birth of all the children. The
states that she "is poor, and
"that now that she is depriv
raise his children."

Your committee favorably r

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 191.

STEPHEN SCHIEDEL.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Morrill, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 813.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 813) granting a pension to Stephen Schiedel, submit the following Senate report:

Stephen Schiedel, the claimant under this bill, made application for pension March 20, 1880, alleging, as a basis for his claim, that at Corinth, Miss., about June, 1862, while loading logs, of which they were to build their quarters, he sprained his back by overlifting, being obliged to hold one end of a log, the other having slipped down, falling upon a lever, which flew up and hit him on the left shoulder, injuring the same; that he was treated by regimental surgeon and in the hospital at Corinth, Miss., and at Huntsville, Ala., and by doctors at Hamburgh, N. Y., and Hubbard, Ohio. The claim was rejected by the Commissioner of Pensions, June 30, 1883, on the ground "that the evidence, the sources of which appeared to be exhausted, fails to show origin of injury to back and left shoulder in the service and line of duty."

The claimant, in an affidavit, states that he can not furnish the testimony of officers who knew of his injury for the reason that both the captain and lieutenant are dead; can not furnish the affidavit of the regimental surgeon who treated him, as he became a colonel and was killed; that the two other surgeons, whose names and whereabouts he can not give, treated him at different times.

The soundness of claimant prior to enlistment is established beyond any reasonable doubt. Two comrades testify to incurrence of the disability in the service, both being present at the time and witnessed the accident.

The testimony of his neighbors since his discharge uniformly shows continuance, and that "he complained almost all the time of his lame back and shoulder."

Dr. Julian Harmon, examining surgeon at Warren, Ohio, reporting the results of his examination, gives it as his opinion that the "claimant is three-eighths incapacitated for obtaining his subsistence by manual labor from the cause above stated, injury to back and left shoulder."

The board at Cleveland, Ohio, August 30, 1882, report that his disability is three-eighths total.

Claimant was examined at Youngstown, Ohio, March 22, 1883, by Examining Surgeon J. McCurdy, who finds "the formation of his shoulders perfect, but there is a low but distinct creaking in left shoulder joint, indicating low form of inflammation following injury or chronic rheumatism. Rating, $4, or one-half. After his examination he rates him at total on $8.

The War Department records show that Stephen Schiedel was enrolled October 21, 1861, in Company C, First Missouri Artillery, and is reported transferred to Company D, present to August 31, 1864. Stationed June, 1862, near Corinth, Miss. (the time of the alleged incurrence of the disability), and that he was mustered out October 29, 1864.

Special Examiner A. L. Pelham concludes his report by saying:

"With the testimony before me, and as it now stands, I am of the opinion that the trouble to the back is not due to the injury as the claimant alleges. I am, however, rather inclined to the opinion that the trouble to the left shoulder and the trouble, if any, to the back is the result of a rheumatic trouble, caused by exposure and hardships during the three years that he served in the Army."

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 192.

WILLIAM J. DUNN.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3584.]

The Committee on Pensions, to whom was referred the bill (H. R. 3584) granting a pension to William J. Dunn, have considered the same and beg leave to submit the following report:

The claimant was a private in Capt. William T. Minter's Company of Alabama Militia in the Florida Indian war from February 29, 1836, to May 30, 1836. He prays a pension at the same rate as is allowed by law for service in the war of 1812.

Mr. McRae, Representative in Congress from the State of Arkansas, states that the claimant is seventy-eight years old, quite feeble, unable to work, and very poor.

There are precedents for this legislation, and your committee, believing that the case is a meritorious one, recommend that the bill do pass with the following amendments: Correct the name of the claimant so as to read William J. Dunn, and strike out the words, "Jersey, Bradley County" in the fifth line of said bill and substitute in lieu thereof the words, "Hampton, Calhoun County."

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 193.

LUCY HALE.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DE LANO from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 2423.]

The Committee on Pensions, to whom was referred the bill (H. R. 2423) granting a pension to Lucy Hale, have considered the same and report as follows:

Nathaniel Wallace, the father of the claimant, served as a private in Capt. James Hadlock's company, Colonel Yates, fourteenth regiment Albany county (New York) militia, war of the Revolution, as shown by the records of the adjutant-general's office, State of New York.

The claimant in her prayer for relief declares that she is the only child now living of Nathaniel Wallace and that no pension was ever allowed her father or any one else on account of his said service; also that he was helplessly blind as the probable result of said service, and she took care of him during the decliinng years of his life. It further appears from the papers that she is now about sixty-seven years of age, and a large number of citizens of her home certify that she is a worthy and estimable lady, and that her case is entitled to the earnest consideration of Congress.

Mr. O'Donnell, a Representative in Congress from the State of Michigan, vouches for the good character of the claimant and for the fact that she possesses no property or income of any kind to afford her a comfortable support.

There being precedents for this legislation your committee recommend the passage of the bill with the following amendment: Strike out the words "subject to the provisions and limitations of the pension loss" in the fourth and fifth lines of said bill and add after the word "regiment" in the eighth line of said bill the words "and allow her a pension at $20 per month during her natural life."

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 194.

MARY ANN ALLEN.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DE LANO, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4030.]

The Committee on Pensions, to whom was referred the bill (H. R. 4030) granting a pension to Mary Ann Allen, have considered the same and beg leave to report:

The claimant's husband, John Piner, was a private in Capt. James Davidson's company of Col. Richard M. Johnson's regiment, Kentucky Mounted Militia, war of 1812, from May 20, 1813, to November 19, 1813.

The claimant asks a pension at the rate of $25 per month, and in her application therefor declares she is ninety-four years old, and since the late war has been without any means of support. She states further, that her father was a soldier in the Revolutionary war; that she was married to her first husband, John Piner (on account of whose service her application for pension is made) in Lincoln County, Ky., in the year 1814, and that after the death of said Piner, in the summer of 1823, she remarried to one Benjamin Allen, who died April 6, 1838, since which time she has remained a widow.

P. E. Garr and Ida M. Dieruf, citizens of Louisville, Ky., testifies to the claimant's identity as the widow of John Piner.

There are precedents for granting pensions to the unmarried widows of soldiers of the war of 1812, and your committee recommend that the bill do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 195.

FREDERICK N. KRESS.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Dolliver, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 2230.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 2230) for the relief of Frederick N. Kress, respectfully report:

That your committee, having examined into the merits of this case, find that the Senate report of this session fully sets out the facts as this committee has ascertained upon its own investigation, and the Senate report, with its recommendation, we adopt as to the present bill.

The said report is as follows:

The Committee on Naval Affairs, to whom was referred the bill (S. 128) entitled "A bill for the relief of Frederick N. Kress," have had the same under consideration, and report it with the recommendation that it pass.

Frederick Norton Kress was born at Rock Island Arsenal, Ill., December 9, 1866, and appointed a naval cadet October 3, 1882, from the Twenty-ninth Congressional district, New York.

During his academic course he was always at the head of his class.

He was graduated June 11, 1886, and ordered to the Mediterranean squadron for the two years' cruise prior to the final examination for commission.

At that time and until December 5, 1887, he was in perfect health.

On December 5, 1887, on the U. S. Flagship *Pensacola*, at Genoa, Italy, he was reported sick of malarial fever, and was two weeks under medical treatment. February 28, 1888, at New York, immediately on the ship's arrival, he was again placed on the sick report and under medical treatment for pneumonia.

On March 5, he was examined by a board of United States naval surgeons, pronounced unfit for duty, and ordered home on sick leave.

He was unable to attend the examination with his class in the month of June, 1888, but was examined for final graduation during September following and pronounced to be physically disqualified for the naval service, and, although he successfully passed the mental examination and retained his standing at the head of his class, he was honorably discharged October 15, 1888.

The following letter and accompanying memorandum were received in reply to a request of Major Kress to have his son's honorable discharge revoked by the President of the United States:

Executive Mansion,
Washington, June 29, 1889.

My Dear Major: There has come to-day, from the Secretary of the Navy, the inclosed memorandum in regard to the case of your son. It seems to leave it entirely with Congress, and I should think you would have no difficulty in securing the passage of the bill.

Very truly yours,

E. W. Halford,
Private Secretary.

Maj. John A. Kress, *Benicia, Cal.*

Memorandum relating to the case of Frederick N. Kress, late a naval cadet in the United States Navy.

[Furnished in obedience to request of the President of the United States.

Mr. Kress was appointed a naval cadet at the Naval Academy on the 3d of October, 1882, and completed the four years' course at the Academy on June 11, 1886, passing at that time at the head of his class. On June 14, 1886, in obedience to order from the Department, he reported for duty on board the U. S. S. *Brooklyn* at the navy-yard, New York, and on the arrival of that vessel on the European station shortly afterward was transferred to the U. S. S. *Pensacola*, flagship of that station, on which vessel he served until her return to New York in 1888. On March 5 of that year Mr. Kress was examined by a medical board of survey, which reported that he was unfit for duty by reason of pulmonary consumption of a probably indefinite duration, and recommended that he be granted sick leave, and on the 7th of the same month he was detached from the *Pensacola* and granted sick leave. On April 30 following Mr. Kress was ordered to proceed to the Naval Academy and report for final examination preparatory to graduation; but having reported himself unable to travel in obedience to said orders, they were, on May 2, 1888, revoked, and Mr. Kress was continued on sick leave in order that he might have a further opportunity of so improving his physical condition as to be enabled to undergo his examination. The class of which Mr. Kress was a member was examined in June, 1888, and on the 30th of that month those graduates of the class not required to fill vacancies happening in the previous year were, in accordance with the provisions of the act of August 5, 1882, honorably discharged from the service; a vacancy was, however, kept open for Cadet Kress until October 15, 1888, in order that he might be appointed to the service in case he should successfully pass the examination and be recommended by the academic board for such appointment.

On the 30th of July, 1888, Mr. Kress reported himself ready to undergo examination, and was accordingly, on the 9th of August following, directed to proceed to Annapolis and report to the superintendent of the Naval Academy on the 25th of September, 1888, for examination. On reporting at the Academy, in obedience to said orders, Mr. Kress was examined by a board of medical officers, as required by paragraph 151 of the regulations of the Naval Academy, which reads as follows:

"A naval cadet shall not pass from a lower to a higher class, perform the required two years' service afloat, or be appointed in the lower grades of the Line and Engineer Corps of the Navy and of the Marine Corps until he shall have been examined by a board of naval surgeons and pronounced physically qualified to perform all his duties."

He was found "physically disqualified for the naval service on account of pulmonary disease," but was subsequently examined as to his mental and professional qualifications, and on the 10th of October, 1888, was reported by the academic board as having successfully passed such examination and as again standing at the head of his class. On account of such physical disability he was, however, ineligible to appointment to either of the lower grades of the service.

It has been uniformly held that naval cadets are not officers within the meaning of the statutes providing for the placing of certain officers on the retired list, and Mr. Kress could not, therefore, under the provisions of existing law, be placed on said list. I find, however, upon inquiry, that it has been the practice of the Department since 1884 to honorably discharge those cadets found, at the completion of the six years' course, mentally and professionally qualified but physically disqualified for the service, in order that such cadets may not be deprived of the certificate of graduation and the year's sea pay provided for by the act of August 5, 1882. In accordance with the practice of the Department in such cases Mr. Kress was, therefore, on the 15th of October, 1888, honorably discharged from the service with the certificate of graduation and the pay provided for by said act.

In a case similar to this, acted upon by the Department in 1885, that of Naval Cadet Keith, who finished his six years' course in 1885, and successfully passed the mental and professional examinations, obtaining a multiple sufficiently large to place him within the number of those cadets of his class to be retained in the service, under the provisions of the act of August 5, 1882, but who was found physically disqualified for the service, the Department, in accordance with its practice, honorably discharged Mr. Keith from the service, with a certificate of graduation and one year's pay. The Department being, under the circumstances, without the power of affording Mr. Keith relief, he sought relief from Congress, and an act was passed (act of January 17, 1887) authorizing his appointment as ensign on the retired list, and he was accordingly so appointed by the President.

Mr. Kress has also sought relief through legislation, and at the last session of Congress a bill was introduced and passed the Senate, providing the same relief for him as that afforded Ensign Keith.

WM. B. REMEY,
Judge-Advocate-General.

Approved:

B. F. TRACY,
Secretary of the Navy.

[An extract from the Congressional Record, of January, 1887, showing action taken by Congress for the relief of Albion S. Keith, whose case was similar to that of Frederick N. Kress.]

Mr. DAWES. I am instructed by the Committee on Naval Affairs, to which was referred the bill (H. R. 1085) for the relief of Albion S. Keith, to report it favorably, and I am also instructed by the committee to make a brief statement to the Senate and ask for the passage of the bill at this time.

Mr. ALLISON. Let the bill be read in full.

The Chief Clerk read the bill, as follows:

"Whereas Albion S. Keith, late a naval cadet in the United States Navy, having successfully passed his final examination for graduation, and being found mentally, morally, and professionally qualified for promotion to the rank of ensign, has been, however, found physically disqualified for promotion by reason of disease contracted from exposure in the line of duty at sea, which entirely disables him, and because of which he was honorably discharged: Therefore,

"*Be it enacted, etc.*, That the President be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint the said Albion S. Keith an ensign in the United States Navy on the retired list.

"Enrolled bill. Signed.

"A bill, H. R. 1085, January 8, 1887, for the relief of Albion S. Keith."

Mr. DAWES. If the Senate will indulge me in a brief statement, and there is then the slightest objection, I shall not press the bill. It had passed the House just before the recess upon the simple statement which I am about to make, and if the Senate does not agree with me, of course I will put it upon the Calendar.

* * * * * * *

I ask that the bill may be considered now.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

[Calendar No. 2507. 50th Congress, 2d session. Senate, 3779.]

IN THE SENATE OF THE UNITED STATES,
January 7, 1889.

Mr. Cameron introduced the following bill, which was read twice and referred to the Committee on Naval Affairs.

January 9, 1889.—Reported by Mr. Cameron without amendment.

A BILL for the relief of Frederick N. Kress.

Whereas, Frederick N. Kress, late a naval cadet in the United States Navy, having passed with distinction his final examination for graduation, and being found mentally, morally, and professionally qualified for promotion to the rank of ensign, has been, however, found physically disqualified for promotion by reason of a disease contracted from exposure in the line of duty at sea, which entirely disables him, and because of which he was honorably discharged: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint the said Frederick N. Kress an ensign in the United States Navy on the retired list.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 196.

DAVID WALTER JONES.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Mansur, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 421.]

The Committee on Claims, to whom was referred Senate bill 421, entitled "An act for the relief of the legal representatives of David Walter Jones," report, that upon a careful examination of the report made to the Senate at this session by Senator Plumb (Senate Report No. 7), the law and the facts justify the passage of this act, and being satisfied with said Senate report, your committee adopt it as their own, and recommend that the bill do pass.

[Senate Report No. 7, Fifty-first Congress, first session.]

The Committee on Public Lands, to whom was referred the bill (S. 421) for the relief of the legal representatives of David Walter Jones, have duly considered the same and submit the following report:

On January 28, 1886, the House of Representatives passed a resolution directing the Secretary of the Treasury to transmit to the House a report of "all balances due to and from the United States, as shown by the books of the offices of the Register and Sixth Auditor of the Treasury Department, from 1789 to 30th June, 1885." In response to this resolution the Secretary of the Treasury, on July 28, 1886, transmitted to the House (H. R. Ex. Doc. No. 363, Forty-ninth Congress, first session) a letter, accompanied by reports from the Sixth Auditor and Register of the Treasury, purporting to show such balances due to and from the United States, being a document of 204 pages.

In the report of the Register of the Treasury, on page 189, there appear to be due to David Walter Jones, receiver of public moneys at Mineral Point, Wis., two balances, one of $1,860.85 in 1842, and the other of $235.58 in 1845, from the United States.

On May 28, 1887, Mr. Cockrell addressed a letter to the Commissioner of the General Land Office, asking information as to these two balances, and received the following reply and accompanying copy of letter to the Comptroller:

Department of the Interior, General Land Office,
Washington, D. C., June 3, 1887.

Sir: In reply to your letter dated May 28, 1887, I have the honor to state that the First Comptroller of the Treasury, by letter dated May 19, 1887, called upon this office for the status of the account of David W. Jones, late receiver at United States land office, Menasha, Wis., and the information was furnished him by letter "M" of this office, dated May 24, 1887, a copy of which is herewith inclosed.

Very respectfully,

Wm. A. J. Sparks,
Commissioner.

Hon. F. M. Cockrell,
United States Senate.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 197.

JAMES B. GUTHRIE.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Carlton, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1614.]

James B. Guthrie was postmaster at Paris, Tenn., in 1875, and on the night of September 11, 1875, his office was broken open by burglars and $300 in money-order funds taken from the drawer where he kept his funds. He filed his claim again in 1883 in the Post-Office Department, under the act of 1883, for adjudication and allowance, having promptly settled with the Department the full amount charged against him and having previously failed to get credit for the amount stolen from him as stated.

The Assistant Attorney-General of the Post-Office Department, in recommending the disallowance of the claim, after setting forth the evidence, delivered the following opinion:

> The fact of the burglary is sufficiently proven, and it appears that the claimant exercised what was, at least in his opinion and that of his neighbors, due caution and care for the protection of the property in his charge. There is, however, aside from the claimant's own statement, no proof that the money for which credit is claimed was stolen; and although the evidence as to claimant's integrity and correct habits is such as to carry with it the moral conviction that his statement concerning the loss is true, I am of the opinion that it is not such as to establish his claim within the contemplation of the statute.

While it is true that claimant has no other evidence as to the loss but his own oath, he accounts for the absence of the usual written evidence by the statement that his successor in office destroyed all the old papers in the office, as he claimed, under the direction of an agent of the Post-Office Department, and among the old papers left in the office as a part of its records when Mr. Guthrie retired was the written evidence which he kept of all remittances to the Department. Mr. Williams, his successor, is now dead, and of the three persons who usually witnessed the counting and sealing of money for him one is dead and the other two testify to the fact that they did at various times witness for him, though they cannot recall dates. Every statement made by the claimant as to the burglary is fully corroborated and sustained, and his general character is fully sustained by his neighbors and the public officials of his county.

From the evidence in the case, taken as a whole, the committee are of the opinion that Mr. Guthrie sustained the loss as claimed, and they recommend the passage of the bill for his relief.

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[redacted]

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 199.

SAMUEL L. M. PROCTOR.

FEBRUARY 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PARRETT, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3227.]

The Committee on Pensions, to whom was referred the bill (H. R. 3227) granting an increase of pension to Samuel L. M. Proctor, have considered the same and report as follows:

Said bill is identical with House bill 9491 of the Fiftieth Congress, which was reported favorably to the House in Report No. 2689, first session, and your committee adopt that report (No. 2689) as applicable to this bill, and recommend that the bill do pass.

HOUSE REPORT.

The Committee on Pensions, to whom was referred the bill (H. R. 9491) granting an increase of pension to Samuel L. M. Proctor, have considered the same and report as follows:

The claimant is now in receipt of a pension at the rate of $15 per month for chronic diarrhea and resulting indigestion and general debility.

The records of the War Department show that Mr. Proctor was a second lieutenant in Company G, Third Regiment Illinois Volunteers, Mexican War, from June 29, 1846, to May 20, 1847; was also a lieutenant in Captain Lawler's Mounted Illinois Volunteers in Mexico, from August 13, 1847, to October 26, 1848. He also served as first lieutenant, Company B, First Illinois Cavalry, war of the rebellion, from July 9, 1861, to February 1, 1862, and as captain of said company from the latter date to July 14, 1862.

In his application before the Pension Bureau he declared that while in Mexico in 1847 he contracted disease of eyes. He has filed considerable proof before that office, but no final action has ever been taken thereon.

The claimant is now totally blind, is in a dependent condition, and is seventy-six years of age.

Albert Sisk, who was a comrade with the claimant in the Mexican war, testifies that while at Camp Patterson, on the Rio Grande River, in Mexico, the claimant contracted disease of eyes and continued to suffer therefrom during the remainder of the service.

Dr. S. D. Ensminger, who was a hospital steward in the regiment in which claimant served in Mexico, testifies that he treated and nursed the claimant at Tampico, Mexico, in the fall of 1847, for an attack of chronic diarrhea and disease of eyes; and that the claimant continued to be so affected during the remainder of his service in Mexico. That after his return home in October, 1848, he continued to treat him as his physician for both of said diseases at different times up to 1861. When claimant entered the Army again in 1861 his eyes were somewhat affected, and after his re-

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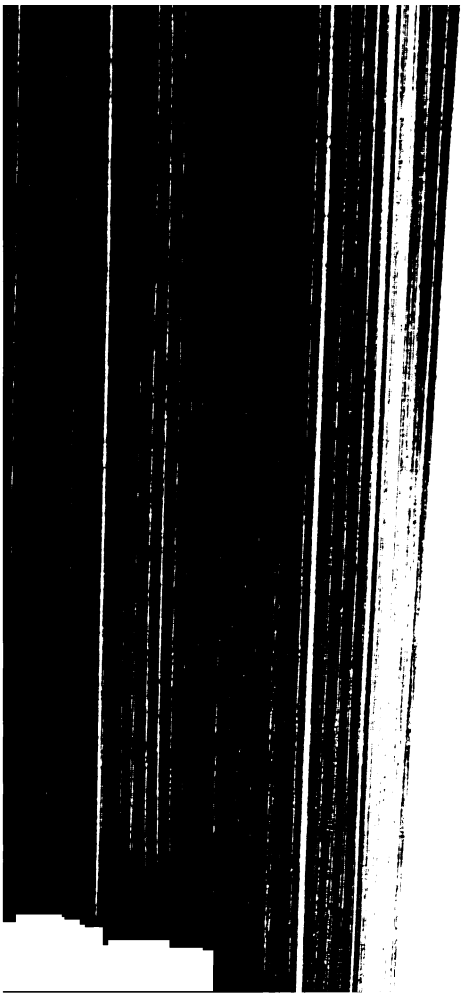

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 200.

ISAAC ENDALY.

February 15, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Parrett, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5751.]

The Committee on Pensions, to whom was referred the bill (H. R. 5751) increasing the pension of Isaac Endaly, have considered the same and beg leave to report:

The claimant served in Capt. William Smith's company, of Tennessee militia, war of 1812, from January 28, 1814, to March 3, 1814. He was granted bounty land for his honorable services, and he is now a pensioner at $8 per month, under the act of March 9, 1878. He asks an increase to $50 per month.

The proof submitted shows clearly that the claimant is almost ninety-nine years of age, and that he is in feeble health and almost blind; also that he has no income from which to procure the necessaries of life except the said pension of $8 per month.

Your committee believe that, in view of the claimant's services, his great age, and destitution, the relief prayed for should be granted, and the passage of the bill is therefore recommended.

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51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 201.

H. CLAY WOOD.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 5332.]

The Committee on War Claims, to whom was referred the bill (H. R. 5332) for the relief of H. Clay Wood, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto appended for information.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[House Report No. 1423, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 7501) for the relief of H. Clay Wood, submit the following report:

This is a claim for loss of property by the claimant at the evacuation of Fort Cobb, Ind. Ter., in May, 1861, and at Indianola, Tex., in the autumn of 1861, in consequence of the surrender of the Military Department of Texas by General Twiggs. Claim stated at $996.10.

Of the four officers who left Fort Cobb, Ind. Ter., May 5, 1861, with the battalion (Companies C and F) of the First Infantry, on the evacuation of that post, Capt. Joseph B. Plummer and Second Lieut. H. Clay Wood alone remained loyal to the Government of the United States.

The two others subsequently joined the Southern Confederacy.

The battalion in a few days united with the column of troops of General Emory, and marched, under his command, to Fort Leavenworth.

Shortly after reaching Fort Leavenworth some seventy-five recruits, of a detachment consisting of about one hundred and fifty, forwarded for the regiment of Mounted Rifles, were attached to the battalion of the First Infantry and placed under the immediate command of Lieutenant Wood.

This battalion, with other troops, left Fort Leavenworth on or about June 10, and marched, via Kansas City, through western Missouri to join General Lyon. Having united with his command, all the troops concentrated at Springfield, Mo.

On the 10th of August was fought the battle called by the Union forces the battle of Wilson's Creek, by the Confederates Oak Hills, some 10 miles south of Springfield. The Union troops marched out the previous evening a little under 4,800 men (Major Sturgis, in his official report, states the number as 3,700, but this number is exclusive of Colonel Sigel's column), to meet a force of the enemy estimated at 23,000. The First Infantry was in the advance, and formed on the left of the line of battle, in a corn-field, in round numbers probably less than 250. Lieutenant Wood's recruits were the extreme left of the whole line.

Opposed to this infantry in the corn-field were the Second Regiment of Arkansas Mounted Riflemen (Col. James McIntosh) and the Third Louisiana Infantry (Col. Louis Hébert). General Ben. McCulloch states in his official report: "A terrible

[Memorandum to accompany

In the autumn of 1860, I, ordered to report at Newpo for the First Infantry to the

In Cincinnati, in addition hold effects. This property detachment. We traveled o Orleans, and thence by stea

On leaving Indianola, on o aled, as filed with the bill, va the United States quarterma Major, Second Cavalry (since train.

General Twiggs, commandi 1861, to the Confederate or St without fault on my part, and ant Major resigned and unf quently upon the staff of Gene Indianola, in April, 1861.

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On December 8, 1860, Fort C tory, had been transferred fro West, headquarters at St. Loui

All these posts were subseq bill) from the General Govern tions, on May 5, 1861, by he tor onment of all property, both wife and I were permitted to ta as it stood in my quarters, wa complete schedule of this prope ing in quartermaster's store-ho is filed with this bill.

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I invite attention to the lette renzo Thomas, Adjutant-Gener Military Affairs, House of Repre claim to the liberality of Con ninth)

A sworn schedule of the goods lost gives as their value the sum of $996.10. Your committee report back the bill and recommend its passage.

There is a precedent for paying this claim in the case of Frances H. Plummer. A copy of the report in that case is hereto attached and made a part of this report:

[Senate Report No. 1370, Forty-ninth Congress, first session.]

That the committee adopts and presents again the favorable report presented in the first session of the Forty-seventh and Forty-eighth Congresses, as follows:

"That the late Brig. Gen. Joseph B. Plummer, a graduate of the United States Military Academy, served honorably in the Florida and Mexican wars. At the breaking out of the rebellion he was a captain in command of two companies of the First United States Infantry, stationed at Fort Cobb, in the Indian Territory. In Texas General Twiggs joined the Confederacy and surrendered his forces. A considerable force of rebels, marching northward from Texas, occupied Fort Washita the day Lieutenant-Colonel Emory evacuated it, and on the 5th of May, 1861, a large body of Texans occupied Arbuckle. The retreating Union forces were directed to concentrate at Fort Leavenworth, Kans. Captain Plummer evacuated Fort Cobb May 5, and marching rapidly joined Lieutenant-Colonel Emory May 9, and proceeded to Kansas. He commanded the First United States Infantry at Wilson's Creek and was severely wounded. He became colonel of the Eleventh Missouri Volunteers, and for gallantry at Fredericktown, October, 1861, he was promoted to be a brigader-general. He served with distinction in many battles, and died of his wounds at Corinth, Miss., August 9, 1862, leaving a dependent widow.

"Of the three officers with him when he evacuated Fort Cobb, two joined the Confederacy. He had two companies of infantry and but seven wagons for transportation of necessary supplies and seven camp women and their children. His own property he left behind, save what he placed in five large chests and intrusted to the care of Tucker Barton, the sutler, who was supposed to have engaged to take them to Fort Smith and ship them to St. Louis. Barton, who, like his brother, Captain Barton, of the same command, joined the Confederacy, says he was to take them to New Orleans and ship them to New York City. The following is an extract from his affidavit:

"At the time of said evacuation the United States did not have sufficient transportation for the baggage and effects of the officers stationed at said post, for which reason Capt. J. B. Plummer, First Infantry, U. S. Army, intrusted to him, to be taken to New Orleans and thence shipped to New York, if possible, several (he thinks seven) large chests, which he represented contained articles of great value, the collection of a life-time; that a few days after leaving Fort Cobb his train was approached and surrounded by a large body of armed men from Texas, several hundred in number; that he was made prisoner by them on the ground that he was giving aid and comfort to the United States, the parties claiming to hold commissions from the State of Texas; that the chests, being marked in the name of the said Capt. J. B. Plummer, U. S. Army, were declared forfeited, and were forcibly taken from his possession by said body of armed men. This was done partly in the Indian Territory and partly in the State of Texas, in the month of May, 1861.'

A favorable report upon this case in the House during the Forty-fifth Congress says:

"Your committee recognize the fact that when war was actually going on there are many kinds of property that the Government is not liable to pay officers for in case of loss by capture or otherwise; for the reason that at such a time officers must necessarily take the risk and hazard of the service themselves. The Government has, however, provided by law for the payment to officers for horses killed or lost in battle, or by the dangers of the sea while being transported (Revised Statutes, sec. 3482); and also for losses by officers, non-commissioned officers, or privates in the military service while in the line of duty, of horses and certain other property, by capture or necessary abandonment, etc. (Revised Statutes, sections 3483, 3484, and 3485). No provision of law, however, gives the right to any Department, officer, or court to pay this claim.

"'In analogy to the foregoing legal provisions a part of your committee thinks this claim should be paid. A portion of the committee finds the claim should be paid for the further reason that governments have usually undertaken to reimburse their citizens for property lost which was at the outbreak of the war in an enemy's country, and seized and confiscated.

"'At the time war was declared with Mexico an American citizen was in the port of Vera Cruz with his ship, which was seized and confiscated. The United States Government paid for this vessel and its cargo. If a government should pay to its private citizens such losses, much more favorably should it regard the claims for losses of its own officers who are so unfortunate as to be serving when war breaks

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 202.

J. H. STOVALL AND WILLIAM HUGHES.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Stone, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2880.]

The Committee on War Claims, to whom was referred the bill (H. R. 2880), for the relief of J. H. Stovall and William Hughes, report as follows:

The claim is for a large load of pipe staves taken from the claimants by the Army of the United States during the late war. Claim stated at $5,250.

The proof filed in support of the bill shows that the claimants were the owners of 50,000 white oak pipe staves worth $100 per 1,000, and one barge and fixtures worth $250; that in September, 1861, United States troops burned the barge and staves to prevent the Confederate soldiers from using the barge as a ponton or bridge in crossing the Mayfield Creek and attacking Fort Holt, Ballard County, Ky.

The proof filed in support of the claim shows that the claimants were loyal to the Government of the United States throughout the late war, and that the destruction of the property was wholly unnecessary, and your committee therefore report back the bill and recommend its passage.

Mr. STONE, of Kentuc

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 204.

WAGON ROAD BETWEEN MOUNT IDAHO AND LITTLE SALMON MEADOWS, IDAHO.

FEBRUARY 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. DUBOIS, from the Committee on Territories, submitted the following

REPORT:

[To accompany bill H. R. 1590.]

The Committee on Territories, having had under consideration the bill (H. R. 1590) to ratify an act of the Idaho legislature, entitled "An act to provide for a wagon road between Mount Idaho and Little Salmon Meadows, in Washington County, in Idaho Territory, and for other purposes," beg leave to report as follows:

This is an act of the Idaho legislature to build a wagon road from one section of the Territory to another at the expense of the Territory. By an act of the Forty-ninth Congress, approved July 30, 1886, the legislatures of the Territories are prohibited from passing special or local laws for "laying out, opening, altering, and working roads and highways." The road will be a great advantage to the Territory; it will not cost the Government a cent; the people desire it, and your committee recommend that the act passed by the Idaho legislature be ratified by Congress.

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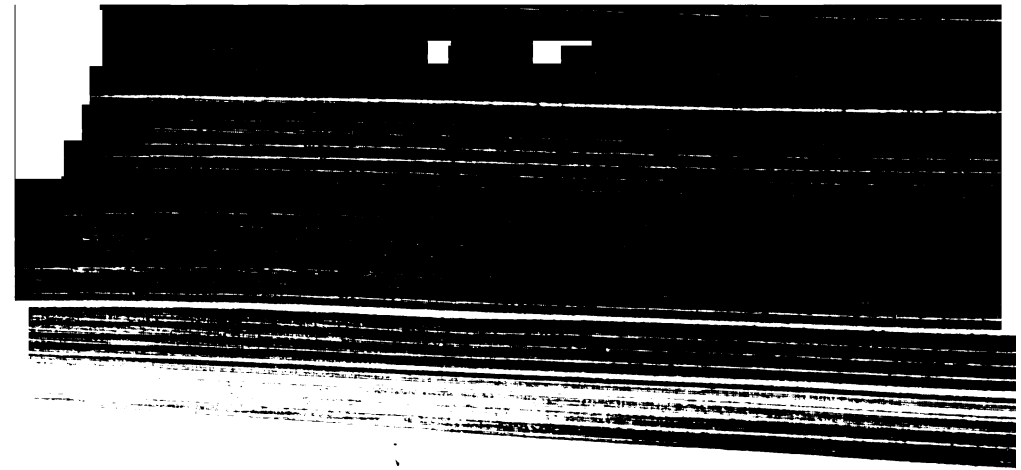

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 205.

TERRITORY OF OKLAHOMA.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Mr. Struble, from the Committee on the Territories, submitted the following

REPORT:

[To accompany bill S. 895.]

The Committee on the Territories, to whom was referred Senate bill (S. 895) to provide a temporary government for the Territory of Oklahoma, having had the same under consideration, have instructed me to report the same back with an amendment and recommend the passage of the bill as amended.

The amendment proposed by the committee is as follows:

Strike out all after the enacting clause of said bill, and insert in lieu of the parts stricken out the following:

That all that part of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: Bounded on the west by the State of Texas and the Territory of New Mexico; on the north by the State of Colorado and the State of Kansas; on the east by the country occupied by the Cherokee tribe of Indians east of the ninety-sixth meridian of west longitude, and by the Creek, Seminole, and Chickasaw countries; and on the south by the Creek, Seminole, and Chickasaw countries, and by the State of Texas, comprising what is known as the Public Land Strip, and all that part of the Indian Territory not actually occupied by the five civilized tribes, and by the Indian tribes within the Quapaw Indian Agency, is created into a temporary government by the name of the Territory of Oklahoma; and any other lands within the Indian Territory not embraced within these boundaries may hereafter become a part of the Territory of Oklahoma whenever the Indian tribe or nation owning such lands shall signify to the President of the United States, in legal manner, its assent that such lands should become a part of the said Territory of Oklahoma, and whenever the President shall make proclamation to that effect; and Congress may at any time hereafter change the boundaries of said Territory: *Provided*, That nothing in this act shall be construed to impair the rights of person or property, or to impair any patent to or right of occupancy of lands now pertaining to the Indians in said Territory under the laws, agreements, and treaties of the United States, or to include any territory occupied by any Indian tribe for which title has been conveyed by patent or otherwise from the United States, or to which such tribe may be entitled by law, agreement, or treaty, without consent of said tribe, or any territory which by treaty or agreement with any Indian tribe is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Oklahoma until said tribe shall signify its assent to the President of the United States that such territory be included in said Territory of Oklahoma, except for judicial purposes as provided herein, or to affect the authority of the Government of the United States to make any regulation, or to enact any law respecting such Indians, their lands, property, or other rights, which it would have been competent to make or enact if this act had never passed: *And provided further*, That the alleged claim of the Choctaw and Chickasaw Nations for additional compensation for the lands west of the ninety-eighth degree of west longitude, heretofore ceded to the United States by said nations, shall, in no wise, be impaired by the provisions of this act.

SEC. 2. That the Constitution and all of the laws of the United States which are not locally inapplicable shall have the same force and effect in said Territory of Oklahoma as elsewhere in the United States; but nothing in this act shall be construed to interfere with the local governments of any of the Indian tribes which may now be provided for by the laws and treaties of the United States, or which may exist in conformity thereto.

SEC. 3. That there shall be a governor, secretary, legislative assembly, supreme court, attorney, and marshal for said Territory, who shall be appointed and selected under the provisions of title twenty-three, chapter one, of the Revised Statutes of the United States, relating to the government of all the Territories. The provisions of said title and of sections one thousand nine hundred and nine, one thousand nine hundred and ten, one thousand nine hundred and twelve, one thousand nine hundred and fourteen, one thousand nine hundred and twenty, one thousand nine hundred and twenty-one, one thousand nine hundred and thirty-four, one thousand nine hundred and thirty-five, one thousand nine hundred and forty, one thousand nine hundred and forty-one, one thousand nine hundred and forty-two, and one thousand nine hundred and fifty-one of the Revised Statutes, and the provisions of the "act to prohibit the passage of local and special laws in the Territories of the United States, and to limit Territorial indebtedness, and for other purposes," approved July thirtieth, eighteen hundred and eighty-six, shall have the same force and effect in the Territory of Oklahoma as in the Territories therein named, and as in the other Territories of the United States: *Provided*, That the first legislative assembly and Delegate to the House of Representatives of the Fifty-first Congress shall be elected as soon after the passage of this act as the governor of said Territory shall order, and that no person shall be entitled to vote at the first election or to be elected to any office who has not been a bona fide resident of said Territory for sixty days previous to said election, and that the council in said Territory shall consist of thirteen members and the house of representatives shall consist of twenty-six members, which may be increased to thirty-nine: *Provided further*, That the first session of the legislative assembly may continue in session for a period not exceeding one hundred and twenty days.

SEC. 4. That for the purpose of facilitating the organization of a temporary government in the Territory of Oklahoma, six counties are hereby established therein, to be known, until after the first election in the Territory, as the First County, the Second County, the Third County, the Fourth County, the Fifth County, and the Sixth County, the boundaries of which shall be fixed by the governor of the Territory until otherwise provided by the legislative assembly thereof.

The county seat of the First County shall be at Guthrie. The county seat of the Second County shall be at Oklahoma City. The county seat of the Third County shall be at Norman. The county seat of the Fourth County, which shall embrace the Fort Reno military reservation, shall be fixed by the governor. The county seat of the Fifth County shall be at Lisbon or Kingfisher City, the place also to be fixed by the governor. The Sixth County shall embrace all that portion of the Territory lying west of the one hundredth meridian, known as the Public Land Strip, the county seat of which shall be at Beaver.

At the first election for members of the legislative assembly the people of each county may vote for a name for such county, and the name which receives the greatest number of votes shall be the name of such county. If two or more counties should select the same name, the county which casts the greatest number of votes for such name shall be entitled to the same, and the names receiving the next highest number of votes in the other counties shall be the names of such counties.

SEC. 5. That there shall be one session of the supreme court each year at the capital of the Territory, beginning on the second Monday in January. The supreme court shall have original jurisdiction in cases of mandamus and habeas corpus and appellate jurisdiction in all other cases, civil and criminal. The chief-justice and associate justices shall preside over the district courts in the Territory of Oklahoma herein provided for. The supreme court shall divide the Territory of Oklahoma into three judicial districts, and it shall fix the times and places at each county seat in each district where the district court shall be held and designate the judge who shall preside therein, and each judge shall reside in the district to which he is assigned. Such district courts shall have exclusive original jurisdiction in the Territory of Oklahoma—

First. In all cases, civil and criminal, over which jurisdiction is conferred therein by this act or may hereafter be conferred by other acts of Congress;

Second. In all cases, civil and criminal, over which jurisdiction may be conferred by the legislative assembly of said Territory; and

Third. In all civil cases; and in all criminal cases, which may hereafter originate in the Territory of Oklahoma and over which jurisdiction has heretofore been conferred on United States courts held beyond the limits of said Territory.

All acts and parts of acts heretofore passed granting jurisdiction over Oklahoma Territory as herein defined to United States court held beyond the limits of the Territory of Oklahoma are hereby repealed, and such jurisdiction is hereby granted to

and conferred upon the said district courts and upon the supreme court of Oklahoma as herein provided, and shall be exercised hereafter in the Territory of Oklahoma; but crimes committed in said Territory prior to the passage of this act shall be prosecuted in the courts held beyond the limits of said Territory to their final disposition the same as if this act had not been passed.

SEC. 6. That criminal cases shall be instituted and tried in the district court held in said Territory in the county in which the offense was committed, unless the case shall be removed to another county by change of venue. Civil suits shall be instituted in the district court in the county in which the defendant resides, or where the contract was made or the cause of action accrued, or where the defendant may be found, and shall be tried therein, unless the case shall be removed to another county by change of venue.

Persons charged with any offense or crime in the Territory of Oklahoma, and for whose arrest a warrant has been issued, may be arrested by the United States marshal or any of his deputies, wherever found in said Territory, but in all cases the accused shall be taken for preliminary examination, before a United States commissioner, or a justice of the peace of the county, whose office is nearest to the place where the offense or crime was committed.

SEC. 7. That the general statutes of Nebraska, which are not locally inapplicable or in conflict with this act, or in conflict with any law of the United States, are hereby extended to and put in force in the Territory of Oklahoma until after the adjournment of the first session of the legislative assembly of said Territory. The governor of said Territory is authorized to divide each county into voting precincts and into such political subdivisions and school districts as may be required by the laws of the State of Nebraska; and he is hereby authorized to appoint all officers of such counties and subdivisions thereof, and all election officers until their election or appointment shall be provided for by the legislative assembly, but not more than two of the judges or inspectors of election in any voting precinct shall be members of the same political party, and the candidates of each political party, who may be voted for at such election, may designate one person who shall be present at the counting and canvassing of the votes cast in each precinct: *Provided*, That the supreme and district courts provided for in other sections of this act shall constitute the courts in said Territory in lieu of courts of like jurisdiction provided for by the laws of the State of Nebraska; and jurisdiction is hereby conferred upon said courts to enforce said laws.

SEC. 8. That jurisdiction is hereby conferred upon the district courts in the Territory of Oklahoma over all controversies arising between members or citizens of one tribe or nation of Indians and the members or citizens of other tribes or nations in the Territory of Oklahoma, and any citizen or member of one tribe or nation who may commit any offense or crime in said Territory against the person or property of a citizen or member of another tribe or nation shall be subject to the same punishment in the Territory of Oklahoma as he would be if both parties were citizens of the United States. And any member of any Indian tribe or nation in said Territory shall have the right to invoke the aid of the courts therein for the protection of his person and property as though he were a citizen of the United States.

SEC. 9. That the provisions of title sixty-two of the Revised Statutes of the United States relating to national banks, and all amendments thereto, shall have the same force and effect in the Territory of Oklahoma as elsewhere in the United States: *Provided*, That persons otherwise qualified to act as directors shall not be required to have resided in said Territory for more than three months immediately preceding their election as such.

SEC. 10. That the lands embraced in the section of country lying west of the one hundredth meridian and between the States of Kansas and Colorado on the north, the Territory of New Mexico on the west, and the State of Texas on the south, known as the Public Land Strip, are hereby declared a part of the public domain of the United States, and shall be open to settlement under the provisions of the homestead laws of the United States, and under the provisions of sections twelve, thirteen, and fourteen of "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes," approved March second, eighteen hundred and eighty-nine, and under the provisions of section two of "An act to ratify and confirm an agreement with the Muscogee (or Creek) nation of Indians in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine, and under the provisions of this act; but all actual and bona fide settlers upon and occupants of the lands in said Public Land Strip at the time of the passage of this act shall be entitled to have preference to and hold the lands upon which they have settled under the homestead laws of the United States, by virtue of their settlement and occupancy of said lands, and they shall be credited with the time they have actually occupied their homesteads, respectively, not exceeding two years, on the time required under said

laws to perfect title as homestead settlers. And all other lands in the Territory of Oklahoma which are not required by law, treaty stipulations, Executive orders, or right of occupancy for the use of any Indian tribe, or which may be relinquished as an Indian or military reservation, shall be a part of the public domain and shall thereupon be open to settlement under the provisions of the homestead laws of the United States, and under provisions of said acts of Congress approved March first and second, eighteen hundred and eighty-nine, and under the provisions of this act: *Provided*, That all tracts of land in Oklahoma Territory which have been set apart for school purposes, to educational societies, or missionary boards at work among the Indians, shall not be open for settlement, but are hereby granted to the respective educational societies or missionary boards for whose use the same has been set apart.

SEC. 11. That the procedure in applications, entries, contests, and adjudications in the Territory of Oklahoma shall be in form and manner prescribed under the homestead laws of the United States, and the general principles and provisions of the homestead laws, except as modified by the provisions of this act and the acts of Congress approved March first and second, eighteen hundred and eighty-nine, heretofore mentioned in this act, shall be applicable to all entries made in said Territory, and no patent shall be issued to any person who is not a citizen of the United States at the time he makes final proof: *Provided*, That where the final decision of the Secretary of the Interior in any land contest arising in the Territory of Oklahoma will, in his opinion, affect a class of cases, or furnish a precedent for the future action of the register and receiver of any land office therein, or of the Commissioner of the General Land Office, or of the Secretary of the Interior in relation thereto, the Secretary of the Interior shall, on application of the Attorney-General, on behalf of the United States, or of any party to such contest, if made within sixty days after the rendition of such decision, cause such case, with all the papers, proofs, and documents pertaining thereto, to be transmitted to the supreme court of the District of Columbia, and the case shall there be tried de novo on the record thus furnished as if originally commenced therein, with the right of appeal to the Supreme Court of the United States as in other cases, without regard to the value of the land in controversy.

SEC. 12. That it is hereby made the duty of the Commissioner of the General Land Office to carefully examine each claim before issuing a patent to the claimant; the entryman shall be required to make full proofs, and unless it shall appear that the claim was taken in good faith, and that there has been full performance of all the terms and requirements of law, he shall refuse a patent and declare all prior proceedings before had in such case to be null and void. All persons settling on lands under the provisions of this act shall be required to select the same in square form, as near as may be, and to maintain a continuous personal residence of five years on the land, and to improve and cultivate the same for that period in the manner required by the homestead laws, and that the provisions of section twenty-three hundred and five of the Revised Statutes of the United States, entitled "Homesteads," shall apply to this act: *Provided*, That registers and receivers of the land offices in the Territory of Oklahoma shall have the power to subpœna witnesses and to compel their attendance in all land contests instituted in their respective offices; but the party desiring the attendance of such witnesses shall advance the fees for one day's attendance, and for mileage to and from the residence of such witnesses at the same rates allowed in the courts of the Territory.

SEC. 13. That lands entered in the Territory of Oklahoma shall not be subject to any judgment or lien obtained upon indebtedness contracted or obligation incurred prior to the issue of patents therefor, nor shall such lands be sold or contracted to be sold, leased or contracted to be leased, conveyed, mortgaged, or in any manner incumbered prior to final proof and the record thereof made in the office of the register and receiver of the district where the land is located; and any sale, lease, conveyance, or mortgage made, executed, or contracted for prior to such final proof and record, shall be absolutely null and void; and all assignments, transfers, and mortgages of unpatented land entries shall be at the risk of the assignees, transferees, and mortgagees, who shall have no recourse against the United States for any failure of claimant's title before issue of patent. No entry shall be allowed of any homestead except to actual settlers thereon; and no preferred right of entry shall be given to any person by reason of claim of occupancy prior to the application to enter the land, except in cases of actual occupancy and continued residence upon the land to the date of the application to enter. And no right of an alleged settler as such shall attach to any land in the Territory until the date of his actual bona fide and continuous residence upon the tract he proposes to enter; and his declaratory statement shall contain a true and full statement of the date and facts of residence on the land and last place of residence prior thereto, and detailed description of improvements, all verified by oath of the applicant and at least one credible witness, made before the register or receiver of the proper land office, as to all facts, except that proof of the applicant's place of residence may be made before any officer authorized by law to administer oaths; but the use of such affidavit in the Territory

shall, in case of false swearing thereto, subject the party to the same penalty as though sworn to before the register or receiver of the proper office.

SEC. 14. That any person entitled by law to take a homestead in said Territory of Oklahoma, who may have located and filed upon a homestead therein, under and in pursuance of the land laws applicable to said Territory, and who has complied with such laws, may receive a patent therefor at the expiration of eighteen months from date of locating upon said homestead upon payment to the United States of one dollar and twenty-five cents per acre for land embraced in such homestead.

SEC. 15. That the Secretary of the Interior is hereby authorized to reserve on any public land in said Territory town sites for any existing or prospective town, city or village, in area not exceeding six hundred and forty acres each, in compact form, or such additional area in Government subdivisions as may be wholly or in part occupied as a town, city, or village site; and no application to enter any land shall be allowed of any tract upon which at the date of the application to enter is a town or village settlement; and no settlement in advance of survey by proper authority shall give any right as against the power to reserve town sites as hereby given, it being the object of this provision to secure to the inhabitants of all towns, cities, and villages in said Territory the benefits and profits arising from the sale of lots therein; and to that end where town sites shall be located upon any public lands in said Territory the provisions of chapter eight, title thirty-two, Revised Statutes, entitled "Reservation and sale of town sites on the public lands," shall apply, except as otherwise provided herein. The Secretary of the Interior shall cause the lots in any site now existing or to be located to be offered, sold, and conveyed as provided in sections twenty-three hundred and eighty two and twenty-three hundred and eighty-three of the Revised Statutes. The money so received from the sale of lots in each town site shall be held by the Secretary of the Interior as a separate school fund for the benefit of the inhabitants of such town, and shall be expended under his direction for the erection of school buildings and the support of public schools therein.

This control of sites and proceeds of sales shall continue only until the legal incorporation of the respective towns, cities, or villages, when the title to the unsold portion of such sites shall vest in the municipality, and the proceeds thereof, as well as any balance in the hands of the Secretary of the Interior, shall be paid over to local authorities, all to be devoted to public purposes within the corporate limits. All needed regulations to carry out the details hereof shall be provided by the Secretary of the Interior: *Provided*, That hereafter all surveys of town sites in the Territory shall contain reservations for parks, of substantially equal area, if more than one park, and for schools, churches, and other public purposes, embracing in the aggregate not less than ten nor more than twenty acres; and patents for such reservations to be maintained for such public purposes shall be issued to the towns, respectively, when organized as municipalities: *And provided further*, That this section shall not apply to that portion of the Territory of Oklahoma which was opened to settlement on the twenty-second day of April, eighteen hundred and eighty-nine, by proclamation of the President.

SEC. 16. That in case more than one half section of land is required for a town site, or application has been made for town sites which are contiguous to each other, the Secretary of the Interior shall include such additional lands as may be required for town-site purposes, or such contiguous town sites, in one patent; but before issuing patent therefor, in such cases, the inhabitants upon the entire tract embraced in such patent shall organize and establish a town or city government and elect a mayor and council for such city or town.

SEC. 17. That in case any lands in said Territory of Oklahoma, which may be occupied and filed upon as a homestead under the provisions of law applicable to said Territory by a person who is entitled to perfect his title thereto under such laws, are required for town-site purposes, it shall be lawful for such person to apply to the Secretary of the Interior to purchase the lands embraced in said homestead or any part thereof for town-site purposes. He shall file with the application a plat for such proposed town-site; and if such plat shall be approved by the Secretary of the Interior he shall issue a patent to such person for land embraced in said town-site upon payment of the sum of ten dollars per acre for all the lands embraced in such town-site, including the streets and alleys, and the Secretary of the Interior may reserve any portion of the lands embraced in such town-sites for public purposes without requiring payment therefor.

The streets and alleys, parks and public reservations shall be indicated on such plat, and shall be donated or reserved for the purposes so indicated. The sums received by the Secretary of the Interior for town-sites under this section shall be paid over to the proper authorities of such cities or towns when organized, to be used by them for school purposes. The Secretary of the Interior shall make all needful rules and regulations for the purpose of carrying this section into operation.

SEC. 18. That there shall be reserved public highways four rods wide between each section of land in said Territory, the section lines being the center of said highways;

but no deduction shall be made, where cash payments are provided for, in the amount to be paid for each quarter section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority, the title to the respective strips shall inure to the then owner of the tract of which it formed a part by the original survey.

SEC. 19. That the President may, at such times as he may deem it necessary, direct land offices to be opened in the Territory of Oklahoma, not to exceed four in number, including those already established, and may nominate, and by and with the advice and with the consent of the Senate appoint, the usual officers to conduct the business of said land offices; and the Commissioner of the General Land Office shall, when directed by the President, cause the various portions of said lands to be properly surveyed and subdivided, where the same has not already been done.

SEC. 20. That it shall be unlawful for any person, for himself or any company, association, or corporation, to directly or indirectly procure any person to settle upon any lands open to settlement in the Territory of Oklahoma, with intent thereafter of acquiring title thereto; and any title thus acquired shall be void; and the parties to such fraudulent settlement shall severally be guilty of a misdemeanor, and shall be punished upon indictment, by imprisonment not exceeding twelve months or by fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court.

SEC. 21. That inasmuch as there is a controversy between the United States and the State of Texas as to the ownership of what is known as Greer County, it is hereby expressly provided that nothing in this act shall be construed to apply to said county of Greer until said controversy shall be determined in favor of the United States by the board of arbitration provided for herein, and to provide for a speedy and final settlement of the controversy relating to said Greer County, a board of arbitration is hereby created for the purpose of deciding said controversy and finally determining the ownership of said territory.

That said board of arbitration shall consist of three persons, who shall be learned in the law, one of whom shall be appointed by the President of the United States, one by the governor of Texas, and the third; who shall be the chief-justice of some one of the States other than Texas, shall be agreed upon and appointed by the President of the United States and the governor of Texas.

The said board of arbitration shall meet at such place or places as may be designated by a majority of its members, and shall have full authority to send for persons and papers, to administer oaths, and to hear and receive testimony in behalf of the respective claims of the United States and the State of Texas; including any evidence heretofore taken and received by the Joint Boundary Commission under the act of Congress approved January thirty-first, eighteen hundred and eighty-five, and to thoroughly investigate and decide said controversy to the end that it may be definitely settled and determined whether said territory belongs to the United States or the State of Texas.

That said board of arbitration shall be appointed and enter upon the work hereby assigned them as early as practicable, and shall render their decision as soon as the importance of the issue and a proper investigation thereof will justify, and when said decision is rendered, the same shall be by said board of arbitration certified to the President of the United States and the governor of Texas, and shall be recorded in the respective general land offices of the United States and the State of Texas, and said decision shall be final and decisive of said controversy.

That the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be expended under the direction of the Secretary of the Interior, to defray the expenses and for compensation of those members of said board of arbitration appointed by the President: *Provided*, That the State of Texas shall pay a sum equal to that paid by the United States as compensation for that member of said board jointly appointed by the President and governor of Texas: *And provided further*, That should the decision of said board of arbitration be in favor of the United States, then, and in that event, all actual and bona fide settlers upon and occupants of the lands in said county on the first day of January, eighteen hundred and ninety, shall be entitled to have preference to and hold the lands upon which they have settled under the homestead laws of the United States by virtue of their settlement and occupancy of said lands, and they shall be credited with the time they have actually occupied their homesteads, respectively, not exceeding two years, on the time required under said land laws to perfect title as homestead settlers.

SEC. 22. That the following sums, or so much thereof as may be necessary, are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be disbursed under the direction of the Secretary of the Interior, in the same manner that similar appropriations are disbursed in the other Territories of the United States, namely: To pay the expenses of the first legislative assembly of said Territory, including the printing of the session laws thereof, the sum of forty thousand dollars.

To pay the salaries of the governor, the judges of the supreme court, the secretary of the Territory, the marshal, the attorney, and other officers whose appointment is provided for in this act, for the remainder of the fiscal year ending June thirtieth, eighteen hundred and ninety, the sum of twenty thousand dollars.

To pay for the rent of buildings for the legislative and executive offices, and for the supreme and district courts; to provide jails, and support prisoners; to pay mileage and per diem of jurors and witnesses; to provide books, records, and stationery for the executive and judicial offices for the remainder of the fiscal year ending June thirtieth, eighteen hundred and ninety, the sum of fifteen thousand dollars.

To enable the governor to take a census of the inhabitants of said Territory, as required by law, the sum of ten thousand dollars.

To enable the governor to carry into effect the laws of Nebraska put in force by this act in the Territory of Oklahoma and other laws relating to public schools; to pay the salaries of school officers and school teachers, and for the rent of buildings and for fuel and fixtures therefor, and for the expenses of their care and preservation, the sum of one hundred thousand dollars.

SEC. 23. That so much of the lands embraced in the Territory of Oklahoma as have not yet been surveyed shall be surveyed, and the incomplete surveys of the lands in the tract commonly known as the "Public Land Strip" or "No Man's Land," shall be completed, as soon as practicable after the passage of this act, according to the terms of existing laws for the survey of the public lands of the United States, and to enable the Secretary of the Interior to carry out the provisions of this section, at the rates now allowed by law for the survey of such lands, the sum of fifty thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, the surveys to be executed under the direction of the Commissioner of the General Land Office.

SEC. 24. That section eighteen hundred and fifty of the Revised Statutes of the United States shall not be applicable to the Territory of Oklahoma, and all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 25. That all that part of the United States which is bounded on the north by the State of Kansas, on the east by the States of Arkansas and Missouri, on the south by the State of Texas, and on the west and north by the Territory of Oklahoma as defined in the first section of this act, shall, for the purposes of this act, be known as the Indian Territory; and that the provisions of this act hereinafter set forth shall apply to said Indian Territory only.

SEC. 26. That one supreme court and three district courts are hereby established in the Indian Territory. The supreme court shall consist of the judge appointed under and by virtue of "An act to establish a United States court in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine, who shall be the chief-justice, and two other judges to be appointed by the President, by and with the advice and consent of the Senate, as in other Territories, and each of said judges shall receive a salary of three thousand five hundred dollars per annum. The attorney and marshal of the United States court in the Indian Territory shall be the attorney and marshal for the courts established by this section; and the Attorney-General of the United States may appoint two assistant attorneys for said courts, in his discretion.

SEC. 27. That there shall be annually one session of the supreme court of the Indian Territory held at Muscogee, beginning on the second Monday in January; and there shall be a special session of said court at said place, beginning on the first Monday of May, eighteen hundred and ninety. The supreme court shall have original jurisdiction in cases of mandamus and habeas corpus, and appellate jurisdiction in all other cases, civil and criminal, as provided in this act.

SEC. 28. That the Indian Territory shall be, and is hereby, divided into three judicial districts, as follows:

The first district shall consist of the country occupied by the Indian tribes in the Quapaw Indian Agency and all that part of the Cherokee country east of the ninety-sixth meridian, and all of the Creek country.

The second district shall consist of the Choctaw country.

The third district shall consist of the Chickasaw and Seminole countries.

The district courts for the first district shall be held at Muscogee and Vinita, for the second district at Atoka, and for the third district at Ardmore and Purcell. At least two terms of court in each year shall be held at the places for holding court in each district, at such times as the supreme court may fix and determine, and one of the judges of the supreme court shall preside over the district court in each district; and the supreme court shall designate the judge who shall preside over each of such courts, and the judge shall reside in the district to which he is assigned: *Provided*, That the supreme court of the Indian Territory may order, if the interests of the people should hereafter require it, and if suitable accommodations are provided for the use of the court, that two terms of the district court for the second judicial district shall be held each year at McAllister or South McAllister, as the court may determine.

SEC. 29. That the district courts of the Indian Territory shall have exclusive original jurisdiction in their respective districts, except as hereinafter provided, in the following cases:

First. In all cases, civil and criminal, over which jurisdiction was conferred upon the United States court held at Muscogee, under and by virtue of "An act to establish a United States court in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine.

Second. In all civil cases in the Indian Territory, over which the tribal courts have no jurisdiction; and in all cases on contracts entered into by citizens of any tribe or nation with citizens of the United States in good faith and for valuable consideration, and in accordance with the laws of such tribe or nation, and such contracts shall be deemed valid and enforced by such courts.

Third. In all cases, civil and criminal, over which jurisdiction may be conferred by this act or by other acts of Congress.

SEC. 30. That certain general laws of the State of Arkansas in force at the close of the session of the general assembly of that State of eighteen hundred and eighty-three, as published in eighteen hundred and eighty-four in the volume known as Mansfield's Digest of the Statutes of Arkansas, which are not locally inapplicable or in conflict with this act or with any law of Congress, relating to the subjects specially mentioned in this section, are hereby extended over and put in force in the Indian Territory until Congress shall otherwise provide, that is to say, the provisions of the said general statutes of Arkansas relating to administration, chapter one, and the district courts of the Indian Territory shall have and exercise the powers of courts of probate under said laws; to public administrators, chapter two, and the United States marshal of the Indian Territory shall perform the duties imposed by said chapter on the sheriffs in said State; to arrest and bail, civil, chapter seven; to assignment for benefit of creditors, chapter eight; to attachments, chapter nine; to attorneys at law, chapter eleven; to bills of exchange and promissory notes, chapter fourteen; to civil rights, chapter eighteen; to common and statute law of England, chapter twenty; to contempts, chapter twenty-six; to municipal corporations, chapter twenty-nine, division one; to costs, chapter thirty; to descents and distributions, chapter forty-nine; to divorce, chapter fifty-two, and the district courts of the Indian Territory shall exercise the powers of the circuit courts of Arkansas under this chapter; to dower, chapter fifty-two; to evidence, chapter fifty-nine; to execution, chapter sixty; to fees, chapter sixty-three; to forcible entry and detainer, chapter sixty-seven; to frauds, statute of, chapter sixty-eight; to fugitives from justice, chapter sixty-nine; to gaming contracts, chapter seventy; to guardians, curators, and wards, chapter seventy-three, and the district courts of the Indian Territory shall appoint guardians and curators; to habeas corpus, chapter seventy-four; to injunction, chapter eighty-one; to insane persons and drunkards, chapter eighty-two, and the district courts of the Indian Territory shall exercise the powers of the probate courts of Arkansas, under this chapter; to joint and several obligations and contracts, chapter eighty-seven; to judgments and decrees, chapter eighty-eight; to judgments summary, chapter eighty-nine; to jury, chapter ninety; to landlord and tenant, chapter ninety-two; to legal notices and advertisements, chapter ninety-four; to liens, chapter ninety-six; to limitations, chapter ninety-seven; to mandamus and prohibition, chapter one hundred; to marriage contracts, chapter one hundred and two; to marriages, chapter one hundred and three; to married women, chapter one hundred and four; to money and interest, chapter one hundred and nine; to mortgages, chapter one hundred and ten; to notaries public, chapter one hundred and eleven, and the district courts of the Indian Territory shall appoint notaries public under this chapter; to partition and sale of lands, chapter one hundred and fifteen; to pleadings and practice, chapter one hundred and nineteen; to recorders, chapter one hundred and twenty-six, and the clerks of the district courts of the Indian Territory shall be ex officio recorders for their respective districts; to replevin, chapter one hundred and twenty-eight; to venue, change of, chapter one hundred and fifty-three; and to wills and testaments, chapter one hundred and fifty-five; and wherever in any of said laws of Arkansas the supreme court of that State is mentioned the supreme court of the Indian Territory shall be substituted therefor; and wherever in said laws the courts of record of said State, inferior to the supreme court, are mentioned the district courts of the Indian Territory shall be substituted therefor; and wherever the clerks of said courts are mentioned in said laws the clerks of the supreme and district courts in the Indian Territory, respectively, shall be substituted therefor; and wherever the sheriff of the county is mentioned in said laws the United States marshal of the Indian Territory shall be substituted therefor, for the purpose, in each of the cases mentioned, of making said laws of Arkansas applicable to the Indian Territory.

That no attachment shall issue against improvements on real estate while the title to the land is vested in any Indian nation, except where such improvements have been made by persons, companies, or corporations operating coal or other mines,

railroads, or other industries under lease or permission of law of an Indian national council, or charter, or law of the United States.

That executions upon judgments obtained in any other than Indian courts shall not be valid for the sale or conveyance of title to improvements made upon lands owned by an Indian nation, except in cases wherein attachments are provided for.

The Constitution of the United States and all general laws of the United States which prohibit crimes and misdemeanors in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, and all laws relating to national banking associations shall have the same force and effect in the Indian Territory as elsewhere in the United States; but nothing in this act shall be so construed as to deprive any of the civilized nations of jurisdiction over all cases arising wherein members of said nations, whether by treaty, blood, or adoption, are the sole parties, nor so as to interfere with the right and power of said civilized nations to punish said members for violation of the statutes and laws enacted by their national councils where such laws are not contrary to the treaties and laws of the United States; or be construed to establish a State or Territorial government in said Indian Territory, or any government therein except for judicial purposes as provided in this act.

SEC. 31. That the word "county," as used in any of the laws of Arkansas which are put in force in the Indian Territory by the provisions of this act, shall be construed to embrace the territory within the limits of a judicial district in said Indian Territory; and whenever, in said laws of Arkansas, the word "county" is used, the word "district" or the words "judicial district" may be substituted therefor, in said Indian Territory, for the purposes of this act. And whenever in said laws of Arkansas the word "State," or the words "State of Arkansas" are used the word "Territory," or the words "Indian Territory" may be substituted therefor, for the purposes of this act, and for the purpose of making said laws of Arkansas applicable to the said Indian Territory; but all prosecutions therein shall run in the name of the "United States."

SEC. 32. That the provisions of chapter forty-five of the said general laws of Arkansas entitled "Criminal Law," except as to the crimes and misdemeanors mentioned in the proviso to this section, and the provisions of chapter forty-six of said general laws of Arkansas, entitled "Criminal Procedure," as far as they are applicable, are hereby extended over and put in force in the Indian Territory, and jurisdiction to enforce said provisions is hereby conferred upon the courts therein: *Provided*, That the United States circuit and district courts, respectively, for the western district of Arkansas and the eastern district of Texas, respectively, shall continue to exercise exclusive jurisdiction as now provided by law in the Indian Territory as defined in this act, in their respective districts as heretofore established, over all crimes and misdemeanors against the laws of the United States applicable to the said Territory, which are punishable by said laws of the United States by death or by imprisonment at hard labor, except as otherwise provided in the other sections of this act.

SEC. 33. That original jurisdiction is hereby conferred upon the district courts in the Indian Territory to enforce the provisions of title twenty-eight, chapters three and four, of the Revised Statutes of the United States in said Territory, except the offenses defined and embraced in sections twenty-one hundred and forty-two and twenty-one hundred and forty-three: *Provided*, That as to the violations of the provisions of section twenty-one hundred and thirty-nine of said Revised Statutes, the jurisdiction of said district courts in the Indian Territory shall be concurrent in their respective districts with the jurisdiction exercised in the enforcement of such provisions by the United States courts for the western district of Arkansas and the eastern district of Texas: *Provided*, That all violations of said chapters three and four, prior to the passage of this act, shall be prosecuted in the said United States courts, respectively, the same as if this act had not been passed.

SEC. 34. That exclusive original jurisdiction is hereby conferred upon the district courts in the Indian Territory to enforce the provisions of chapter four, title seventy, of the Revised Statutes of the United States entitled "Crimes against justice," in all cases where the crimes mentioned therein were committed in any judicial proceeding in the Indian Territory and where such crimes affected or impeded the enforcement of the laws in the courts established in said Territory: *Provided*, That all violations of the provisions of said chapter prior to the passage of this act shall be prosecuted in the United States courts for the western district of Arkansas and the eastern district of Texas, respectively, the same as if this act had not been passed.

SEC. 35. That the district judges shall not charge juries in regard to matters of fact, but shall declare the law, and in jury trials shall reduce their charge or instructions to writing at the request of either party.

SEC. 36. That jurisdiction is hereby conferred upon the district courts in the Indian Territory over all controversies arising between members or citizens of one tribe or nation of Indians and the members or citizens of other tribes or nations in the Indian Territory, and any citizen or member of one tribe or nation who may com-

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laws of the State of Arkansas. Each commissioner and constable shall execute to the United States, for the security of the public, a good and sufficient bond, in the sum of five thousand dollars, to be approved by the judge appointing him, conditioned that he will faithfully discharge the duties of his office and account for all moneys coming into his hands, and he shall take an oath to support the Constitution of the United States and to faithfully perform the duties required of him.

The appointments of United States commissioners by the court held at Muscogee, in the Indian Territory, heretofore made, and all acts in pursuance of law and in good faith performed by them, are hereby ratified and validated.

SEC. 40. That persons charged with any offense or crime in the Indian Territory, and for whose arrest a warrant has been issued, may be arrested by the United States marshal or any of his deputies, wherever found in said Territory, but in all cases the accused shall be taken, for preliminary examination, before the commissioner in the judicial district whose office or place of business is nearest by the route usually traveled to the place where the offense or crime was committed; but this section shall apply only to crimes or offenses over which the courts located in the Indian Territory have jurisdiction: *Provided*, That in all cases where persons have been brought before a United States commissioner in the Indian Territory for preliminary examination, charged with the commission of any crime therein, and where it appears from the evidence that a crime has been committed, and that there is probable cause to believe the accused guilty thereof, but that the crime is one over which the courts in the Indian Territory have no jurisdiction, the accused shall not, on that account, be discharged, but the case shall be proceeded with as provided in section ten hundred and fourteen of the Revised Statutes of the United States.

SEC. 41. That the chief-justice of the supreme court of the Indian Territory shall have the same power to extradite persons who have taken refuge in the Indian Territory, charged with crime in the States or other Territories of the United States, that may now be exercised by the governor of Arkansas in that State, and he may issue requisitions upon governors of States and other Territories for persons who have committed offenses in the Indian Territory, and who have taken refuge in such States or Territories.

SEC. 42. That appeals and writs of error may be taken and prosecuted from the decisions of the district courts to the supreme court of the Indian Territory in the same manner and under like conditions and provisions as appeals are taken and writs of error prosecuted at the time of the passage of this act from the decisions of courts of like jurisdiction in the State of Arkansas to the supreme court of that State. And the supreme court of the Indian Territory shall dispose of such appeals and writs of error in the same manner and under like conditions and provisions as the supreme court of Arkansas now disposes of such cases.

That every opinion of the supreme court of the Indian Territory shall be reduced to writing and be filed among the papers in the cause to which it relates. The provisions of this section shall apply as well to motions that shall dispose of a cause as to final decisions on the merits. It shall always appear, in the opinion of the court, which of the judges delivered the same and who concurred or dissented.

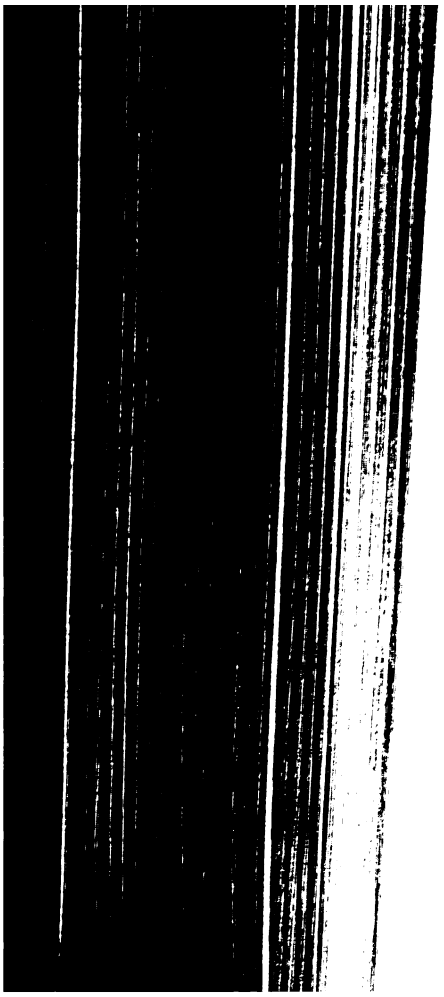
Writs of error and appeals from the final decision of the supreme court of the Indian Territory shall be allowed to the Supreme Court of the United States in the same manner and under the same regulations as from the supreme court of the Territory of Oklahoma, except as otherwise provided in this act.

SEC. 43. That any member of any Indian tribe or nation residing in the Indian Territory may apply to the district courts therein, or to any other court having jurisdiction of naturalization cases, to become a citizen of the United States, and such courts shall hear and determine such application as provided in the statutes of the United States; and the Indians residing in the Quapaw Indian Agency, who have heretofore or who may hereafter accept their land in severalty under any of the allotment laws of the United States, shall be deemed to be and are declared to be citizens of the United States, and entitled to all the rights, privileges, and benefits as such: *Provided*, That the Indians who become citizens of the United States under the provisions of this act do not forfeit or lose any rights or privileges they enjoy or are entitled to as members of the tribe or nation to which they belong.

SEC. 44. The following sums, or so much thereof as may be necessary, are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be disbursed under the direction of the Attorney-General of the United States in the same manner that similar appropriations are disbursed in the other Territories of the United States, namely:

To pay the salaries of the judges of the supreme court, and the fees and compensation of the marshal, the attorney, the assistant attorneys, and other officers whose appointment is provided for in the Indian Territory, for the remainder of the fiscal year ending June thirtieth, eighteen hundred and ninety, the sum of twenty thousand dollars.

To pay for the rent of buildings for the supreme and district courts; to provide



51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 206.

WILLIAM H. COPPINGER.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4862.]

The Committee on Pensions, to whom was referred the bill (H. R. 4862) granting a pension to William H. Coppinger, submit the following report:

William H. Coppinger enlisted in Company K, First United States Dragoons, February 4, 1834, and was honorably discharged February 3, 1837.

He claims a pension by reason of disease contracted during his service in the United States Army; that he contracted rheumatism and disease of the eyes while in such service and has been afflicted more or less ever since.

From his own affidavit it appears that he was seventy-six years of age May 9, 1884, which would make him eighty two years old at this time; that his occupation has been that of a farmer since he left the service; that he is much disabled by reason of the disease aforesaid and unable to do much work; that he resides at Winchester, Jefferson County, Kans.; that he has had several and repeated attacks of rheumatism and been treated by several different physicians, some of whom are dead, and the residence of some of whom he does not now know; that he has been able to perform but very little labor for twenty-five years. His reputation is duly certified by J. D. Fulton, a notary public, who is personally acquainted with him and has no interest in the application.

One of his comrades, A. M. Workman, testifies on the 4th day of June, 1886, that he is seventy-one years old, a resident of Hawes Cross Roads, county of Washington, Tenn.; that William Coppinger, while in the line of his duty, at or near Fort Gibson, from exposure contracted rheumatism and was sent to the hospital, where he was treated for some time, and was afterward sent to the infantry hospital; that up to the time of his discharge he did not recover from said disease; that he does not remember the names of said hospitals; that he was with said Coppinger as private in the same company and regiment; that said Coppinger also had sore eyes from the exposure aforesaid; that he was stout and healthy when he enlisted in 1834, and diseased and unhealthy when discharged and continued so during the acquaintance of said deponent with him; that deponent knew said Coppinger for at least fifty years.

Mr. Workman's credibility is certified by the officer taking the affidavit.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 207.

WILLIAM A. MERRIWETHER.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4027.]

The Committee on Pensions, to whom was referred the bill (H. R. 4027) granting a pension to William A. Merriwether, have considered the same, and report:

The claimant declares that he never was mustered into the service, but was appointed as a volunteer aid with rank of major on the staff of General W. O. Butler and (except for a short time when he was temporarily transferred to the staff of General Joe Lane) served as such aid from October 1, 1847, to March 4, 1848, in the war with Mexico. Further, that in January, 1848, he was notified by Secretary of War Marcy that a commission as second lieutenant in the Second United States Infantry had been made out and sent to him (claimant) in Mexico, but this never reached him, and when peace was declared March 1, 1848, he was released by General Butler and came home.

On reaching home Secretary Marcy sent him a letter of appointment in lieu of the commission which had been lost, but, not wishing to enter the Army, he declined and returned the appointment.

The records of the War Department show that the claimant was in March, 1848, nominated, confirmed, and appointed second lieutenant Eighth United States Infantry, and that the appointment was sent to him March 10, 1848, under cover to General W. O. Butler, City of Mexico, and under date of April 24, 1848, he (claimant) declined the appointment and never held the office. He was granted a bounty-land warrant for 160 acres for service in the Mexican war, but his application for pension under the Mexican war service act of January 29, 1887, was rejected by the Pension Bureau upon the ground that the records of the War Department failed to show the alleged service.

W. E. Woodruff testifies that he has known the claimant forty-five years and knows he served as an aid on the staff of General W. O. Butler in the war with Mexico. The witness saw claimant in service at Camp Butler, again at Vera Cruz, Mexico, and on the route to Mexico, and also many times in the City of Mexico during the winter of 1847–'48.

Ben M. Harvey, who has known the claimant for forty years, testifies substantially the same.

The claimant prays a pension at $30 per month on account of said service. He is now sixty-five years old.

In view of the facts herein stated your committee think the relief prayed for should be granted, and the passage of the bill is therefore recommended.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 208.

JOEL B. TRIBBLE.

February 17, 1890.—Committed to the committee of the whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3582.]

The Committee on Pensions, to whom was referred House bill 3582, beg leave to report:

The claimant was enrolled November 30, 1836, in Capt. H. Barker's company of the battalion of Georgia mounted volunteers, commanded by Maj. C. H. Nelson, and was discharged September 23, 1837. This service was in the Florida Indian war.

The claimant filed an application in the Pension Bureau September 24, 1885, setting forth that at Round Pond, Florida, May 1, 1837, he dislocated his left knee by a fall from a horse in a charge upon Indians and that the injury has continued to disable him to the present time. He was unable to find any of his comrades to substantiate his claim, however, and the claim was rejected January 9, 1886, on the ground of his inability to furnish the proof necessary to establish it.

The papers on file show that the claimant is now about seventy-three years old and has for many years been greatly disabled by the injury of left knee. He asks that he be granted by special act the same pension as is allowed by law for service in the war of 1812.

There are precedents for this legislation and your committee recommend that the bill do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 209.

JOHN GREEN REED.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3543.]

The Committee on Pensions, to whom was referred the bill (H. R. 3543) granting a pension to John Green Reed, have considered the same, and report as follows:

The claimant served in Capt. John Bay's Company of Illinois Volunteers, Black Hawk war, from June 16, 1832, to August 12, 1832. He asks a pension at $20 per month, declaring that he is now in his eighty-first year, and in reduced circumstances, and he asks that the relief prayed for may be granted in order that he may be placed above want for the remaining days of his life. His petition is signed by thirty-seven citizens of Sheffield, Ill., where he (claimant) resides.

Your committee believe this to be a proper case for relief by special act, and the passage of the bill is therefore recommended.

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Mr. MILLIKEN, from the Committee on Public Buildings and Grounds submitted the following

REPORT:

[To accompany Mis. Doc. 107.]

The Committee on Public Buildings and Grounds, to whom the accompanying resolution, providing for the erection of an elevator in the Capitol near the west front of the same, was referred, have had the same under consideration and report that the same ought to pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 211.

PUBLIC BUILDING IN SAN JOSÉ, CAL.

February 17, 1890.—Committed to the Committee of the Whole House, on the State of the Union, and ordered to be printed.

Mr. Clunie, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 139.]

The Committee on Public Buildings and Grounds, to whom was referred House bill No. 139, submit the following report:

The city of San José is the terminus of the Western Pacific Railroad system. Four additional lines leave this city for different portions of the State. It is the commercial center of the Santa Clara Valley. The population to be benefited is upwards of 40,000. The city has more than doubled in population in the last ten years and is rapidly increasing. It is also the financial center of the valley; as a consequence land in the business part of the city, where the proposed building should be located, is rapidly increasing in value. There is no public building in the Fifth Congressional district; this is the only one asked for. It is a rich and populous district, having a population of nearly 300,000. The receipts are about $35,000 annually and are increasing rapidly each year.

In view of the foregoing facts the committee beg leave to report the bill (H. R. 139) back and recommend its passage.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 212.

PUBLIC BUILDINGS AT NEWARK, N. J.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Lehlbach, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 7156.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 565) to increase the appropriation for the improvements and changes of the public building in Newark, N. J., and for the purchase of additional land, respectfully report:

An appropriation, for the purchase of additional ground in Newark, N. J., adjoining the custom-house and post-office building, and for the improvement of buildings, etc., of $350,000 was passed during the Fiftieth Congress, and the act was approved March 1, 1888. The Secretary of the Treasury purchased for the use of the Government the church building adjoining the present post-office site, and the same has been altered so as to make it suitable for the transaction of the public business. The Supervising Architect on examination found that it would be unprofitable to attempt to make additions to the present post-office building, and that it would be more economical, and to the best interests of the Government, to remove the same and erect a new building in place thereof. He prepared plans and specifications, and it has now been ascertained that the amount available is insufficient to pay for the cost of the erection of a new building. According to the plans already prepared, the building will join a two-story structure on Broad street, now being used as a dry-goods store. There would be no space between the buildings, and it is the judgment of the Supervising Architect that this property should be purchased in order that the customary open space can be secured. For the purchase of this land, and for the additional amount necessary to erect the building in the manner proposed, $300,000 additional to what has already been appropriated is needed.

Newark is a city of nearly 200,000 inhabitants. Its postal receipts are over $200,000, yielding a net revenue to the Government of about $100,000. The postal business is steadily increasing. The internal-revenue bureau is located there, and the amount collected in this district is one of the largest in the country.

The United States courts are authorized to hold sessions in Newark for the convenience of the northern part of New Jersey and for the accommodation of over 800,000 of its citizens, and the plans provide for a suitable court-room.

Your committee is of the opinion that the appropriation asked for is proper, and therefore recommend that the accompanying substitute for bill (H. R. 565) do pass.

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 213.

PUBLIC BUILDING AT CEDAR RAPIDS, IOWA.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. KERR, of Iowa, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 299.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 299) providing for the erection of a public building at Cedar Rapids, Iowa, report that they have had the bill under consideration and recommend its passage.

Cedar Rapids is situated in the fifth district of Iowa, which has a population of 200,000, and has no public building. It is the center of a very extensive railroad system embracing through lines of the Milwaukee and St. Paul Railroad, the Chicago and Northwestern Railroad, and is the center of the Burlington, Cedar Rapids and Northern Railroad system with 1,200 miles of road, and which employs 2,500 employés. Forty-three railroad mails on various lines are received and distributed at this office every day.

The population of the city is from 20,000 to 25,000. The gross receipts of the office is $42,000 a year and the net income $27,000. Two hundred and twenty-five thousand registered letters and packages have passed through the office in the last three years. One million nine hundred thousand letters and packages were delivered by carriers last year, and about the same number directly from the office.

Besides this the office is the distributing point of mail over the vast railway mail system centering there and is the headquarters of thirty-four railway mail clerks.

Cedar Rapids has expended $275,000 for school buildings.

It has a masonic library building which cost nearly $50,000.

It has the Holly system of water-works, costing $175,000.

It has a system of electric lights and gas-works, and many miles of street railways.

It has the largest pork-packing establishment in the State of Iowa, with perhaps the exception of Sioux City, packing annually in the neighborhood of 200,000 hogs.

It also has a large number of manufacturing establishments. The resources of the city are equaled by few inland cities in the country. It has abundance of capital, having five strong national banks, and has never had a broken bank.

Congress unanimously reported in favor of a term of the United States court at Cedar Rapids, and the expense of transporting witnesses and prisoners, amounting to $6,000 a year, warrants the location of the court on the ground of economy.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 214.

PUBLIC BUILDING AT BAR HARBOR.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

Mr. MILLIKIN, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 415.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 415) to provide for the erection of a public building at Bar Harbor, in the State of Maine, submit the following report:

Bar Harbor has already become the most important watering place upon the Atlantic coast. Its population during the summer is more than 10,000, not including some 6,000 that board at the hotels and many more who find accommodations at boarding-houses, and both its permanent and transient population are increasing at a very rapid rate, a rate, indeed, quite unknown to New England towns. Its winter population, though several thousand, is considerably less than in summer, yet it is rapidly increasing. Its combination of mountains and sea, of fine harbors, magnificent scenery, bracing air, and abundance of pure water, make it one of the most desirable summer residences on the globe. It is resorted to by people from every State in the Union and from abroad, and the time is not distant when at its present rate of increase it will contain more than 100,000 people in summer.

Its present valuation approximates $8,000,000, and new residences and places of business are constantly being erected. It has already 14 hotels, with a capacity for 6,000 guests; it has 120 stores, and others are being built.

It has four trains of cars per day, with two large steamers which land every day and two others three times per week. This does not include a number of steamers which ply between Bar Harbor and adjacent ports on Frenchman's Bay and the neighboring coast. Bar Harbor is lighted by electric lights; it has an extensive system of sewerage, and is amply supplied with pure water by a system of water-works connecting it with Eagle Lake.

The receipts of the post-office for the year 1889 were $6,791.30.

There are five mails per day and one three times per week, and the Bar Harbor post-office is a distributing office for East Harbor, Seal Harbor, and Sorrento. The office employs one postmaster and five clerks.

The labors of the office and mail-matter are increasing with the rapid increase of population and business.

The present post-office accommodations are entirely inadequate to meet the wants of the public service, and real estate is increasing in value at the rate of 100 per cent. per year. Economy, therefore, demands that the purchase of a site for a public building be not delayed.

Your committee therefore recommend that the bill pass with an amendment limiting the cost of said site and building, including approaches and fire-proof vaults, when fully completed, to the sum of $75,000.

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 215.

PUBLIC BUILDING AT CHESTER, PA.

FEBRUARY 17, 1890—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. DARLINGTON, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 766.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 766) for the erection of a public building for post-office, etc., at Chester City, Pa., respectfully report:

Chester City, situated on the Delaware River, in Delaware County, Pa., contains about 17,000 people, and is connected with other towns within an average distance from its center of a mile and a half containing as many more people, making some 35,000 people who would be accommodated with the proposed building. Chester is a part of the port of entry of Philadelphia, and has a deputy collector, inspector of customs, and two watchmen. At present no adequate accommodations exist for the transaction of Government affairs.

The city is accessible by means of numerous trains daily of the Pennsylvania, Philadelphia and Reading, Baltimore and Ohio Railroad Company, and by steam-boat lines and other vessels. It has numerous schools, public, military, and theological; churches of the different denominations, several daily and weekly newspapers, national and private banks, ship-yards for iron and wooden ships, many establishments for the production of iron and textile fabrics, also chemical works, oil refineries, and fisheries.

Its postal receipts were $17,674 for fiscal year ending June 30, 1889; net receipts for same period, $6,908.30; and its foreign commerce has been annually increasing.

It is the oldest town in Pennsylvania; was founded by William Penn, and here he held his first legislative council.

Last year 96 vessels were sent out by one firm alone, and 44 received. The shipments of 31 steamers were received by another firm. There were shipped from the Chester Oil Works to foreign ports 264,361 barrels of refined oil. There are annually shipped by another firm 1,186,498 cases of oil.

In making these cases $1,000 worth of tin a day is required, and 10,000,000 feet of lumber for casing; 783,000 barrels of crude oil are used, and $47,000 worth of sulphuric acid. The Tide-Water Steel Company imported 40,000 tons of blooms in 1887, and the Chester Rolling Mills over $500,000 worth of ore.

The committee, therefore, in consideration of the premises, recommend that the bill do pass, with the following amendment:

In line 22, strike out the words "one hundred," and insert in lieu thereof the word "eighty."

O

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 216.

PUBLIC BUILDING AT TROY, N. Y.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. QUACKENBUSH, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 605.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 605) to increase the appropriation for the erection of the public building in Troy, N. Y., having had the same under consideration, respectfully report as follows:

At the second session of the Forty-eighth Congress a bill was passed appropriating $200,000 for the purchase of a site and the erection of a public building thereon in the city of Troy, N. Y. At the second session of the Forty-ninth Congress an additional sum of $100,000 was appropriated to the same object, the limit of cost of said site and building being increased by act of Congress to $300,000.

A plat of ground on the corner of Fourth street and Broadway, 131 by 150 feet, in the midst of the most active business section of the said city, has been purchased as the site of said building at a cost of $103,000, including sundry incidental expenses connected with such purchase, leaving the sum of $197,000, which, under the present limit, is the sum available for the complete construction of the said building and the approaches thereto. The site has been cleared of the structures heretofore occupying it, and active work on the Government building is contemplated early in the coming spring.

The superintendent of construction of said building gave expression to his views in a letter of which the following is a copy:

TROY, *January* 14, 1888.

DEAR SIR: It is the generally expressed opinion of the citizens of Troy that the amount appropriated for the proposed Government building to be erected in this city is insufficient. In this opinion I concur. Two hundred thousand dollars will pay for a good brick building, but the structure to be erected here by the United States Government should be built of granite, and be made fire-proof, and to so build it will require, in my judgment, a sum double the amount of the present appropriation.

Respectfully,

M. F. CUMMINGS,
Architect and Superintendent of Construction U. S. Post-office, Troy, N. Y.

Hon. E. W. GREENMAN.

The Supervising Architect says:

TREASURY DEPARTMENT,
OFFICE OF THE SUPERVISING ARCHITECT,
Washington, January 20, 1890.

SIR: I have the honor to state in regard to the bill (H. R. 605) increasing limit of cost of the building at Troy, N. Y., transmitted to you on the 19th instant by the chairman of the Subcommittee on Public Buildings and Grounds, that the present limit would only permit of the construction of a non-fire-proof building, with barely sufficient floor space for the present need of the post-office business. To secure the floor space necessary for the proper transaction of the post-office business, which is rapidly increasing, basing this statement upon what will be required at the expiration of fifteen years, and erecting a fire-proof building, the limit of cost for site, building, and approaches complete should be extended to $500,000.

Should the action be taken as indicated by the bill referred to it will be necessary to decrease the fire limit to 20 feet.

Respectfully, yours,

JAS. H. WINDRIM,
Supervising Architect.

The SECRETARY OF THE TREASURY.

The city of Troy and its suburbs are among the most active and flourishing manufacturing centers in the United States, the output of goods exceeding in value the product of many cities of greater population.

The population receiving mail at the Troy post-office was 73,500 according to the census of 1880. At the present time conservative judges estimate it at 90,000; said census and estimate, including the villages of Lansingburgh and Green Island, and a part of the towns of Brunswick and North Greenbush, all of which receive mail from the Troy office. The gross receipts of said office for the fiscal year ended June 30, 1888, was $100,631.02. A money-order business of about $500,000 is yearly transacted, and not less than 16,000,000 pieces are annually handled by the carriers and employés.

The citizens of Troy have for many years contributed a much larger sum of money annually to the Government in the way of internal-revenue tax than very many cities of larger population.

In answer to the suggestion of the Supervising Architect that the fire limit should be reduced to 20 feet, your committee would state that since the purchase of the site for the Government building the parcel of land north of and adjoining said site has been sold to the Union National Bank, and said corporation has erected thereon a three-story and attic fire-proof banking house, 25 feet in width and extending the full depth of the lot, viz, 131 feet; so that, although the open space between the Government building and the banking house should be reduced to 20 feet, yet the distance between the former and a non-fire-proof structure would be greater by 5 feet than is provided or required by the act of February 14, 1885.

In view of the foregoing facts your committee respectfully recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 217.

PUBLIC BUILDING, DALLAS, TEX.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Abbott, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 848.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 848) for the construction of an addition to the public building in Dallas, Tex., beg leave to report:

The committee finds that the city of Dallas had in 1880 10,000 inhabitants. In 1885 its population had increased to 31,000. Its present population is about 65,000. The city is lighted by both gas and electricity. It has 13 miles of street railways operated by horse-power, 10 miles of rapid transit operated by steam, and 5 miles of railway operated by electricity.

It has eight national banks and four private banks. The active banking capital of the national banks is over $3,000,000. The Dallas clearing-house report for the year 1889, shows gross exchanges of over $45,000,000. Dallas has over $3,000,000 invested in factories of various kinds, which give employment to over 2,200 laborers.

It has eleven railroad outlets, which give it direct connection with all the cities north and east, and with all the cities of the Pacific slope, the Gulf coast, and the City of Mexico.

On July 7, 1882, Congress passed an act authorizing the erection of a public building in said city, not to exceed in cost the sum of $75,000. Subsequent thereto two additional acts were passed, each allowing $25,000 more, making in the aggregate the sum of $125,000.

A building 56 by 85 feet was constructed, but not completed and made ready for use until the early part of 1889.

The growth of the city in population and business had been so rapid and extraordinary that the building when completed was found to be wholly inadequate to serve the purposes for which it was erected.

The circuit and district courts of the United States each hold two terms annually, and are compelled to occupy the same court-room. The United States district attorney, marshal, clerk, and other officers and employés of the Government have their offices in said building.

The collector of internal revenue for the fourth collection district of Texas has his headquarters and principal offices in said building. In this service, in the fourth collection district, there are six deputy collectors, one clerk, one gauger, and four store-keepers. Of these thirteen persons four are permanently located in Dallas, and have their offices in said building. The internal revenue collected for the year ending June 30, 1889, amounted to $84,693.43.

postal-cards collected ..
Newspapers collected .....
Total number of pieces handl
Weight of second-class matte

Money-orde

Money-orders issued:
Domestic money-orders .....
International money-orders.....
Postal-notes .....
Certificates of deposit .....
Money-orders paid:
Domestic money-orders .....
International money-orders.....
Postal-notes.....

The following statement
revenue for year ending Ju

Gross receipts.....
Expenses .....

Net revenue .....

In view of the facts in t
sage of the bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 218.

PUBLIC BUILDING AT ATCHISON, KANS.

February 17, 1890.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. Kerr, of Iowa, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 316.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 316) providing for the erection of a public building at Atchison, Kans., having had the same under consideration, respectfully report:

The city of Atchison, in the State of Kansas, is located on the west bank of the Missouri River, at the western extremity of the grand detour on that river, making it undoubtedly the most natural and desirable "Gate City" for access from the East to the States of Kansas, Nebraska, Colorado, and the Territories of New Mexico and Arizona. It has a population of about 25,000. Within the last fifteen years it has more than trebled its population and business. It is the railroad center of the commercial metropolis of the State. It has eleven railroads, radiating in every direction, including two direct through lines to California, one direct to the City of Mexico, and two to Denver. Its railroad system embraces more than 30,000 miles; between seventy and eighty trains daily arrive and depart from its union depot. It is the terminus of the Atchison, Topeka and Santa Fé Railroad, the Central Branch of the Union Pacific Railway, the Atchison and Nebraska Railroad, the Missouri Pacific Railway, the Hannibal and St. Joseph Railroad, and the Chicago, Rock Island and Pacific Railway. Two other roads are under contract and in process of construction. It is the natural point of shipment for the supply of Eastern and Western markets. It has a very large wholesale trade in groceries, drugs, dry goods, glass and china ware, saddles and harness, notions, tobacco, cigars, coal, lumber, and grain, extending into five States and Territories, amounting in 1887 to $12,000,000.

The grain trade of the city is transacted in six elevators, and its increasing business may be seen by comparison of transactions for the years 1884, 1885, 1886, 1887, and 1888, the returns for 1889 not yet being made out.

Atchison handles more grain and lumber than any other point in the States of Kansas or Missouri west of St. Louis. Its manufactories are represented by iron foundries, furniture establishments, linseed-oil works, pottery, pressed brick, harness and saddles, and boots and shoes. It has seven banks, including four national. Two extensive pork-packing houses have been established immediately opposite on the east side of the river. A bridge crosses the Missouri at this point, costing over

a million dollars. Gas and water works have been established, and many important enterprises are in course of construction. It is the general distributing point for all mails arriving and departing from all localities reached by its extensive system of railroads.

The business of its post-office is now transacted in a rented building, exposed to fire, without vaults or other accommodations for the distribution and protection of the mails. No private individual is justified in erecting such a building as is absolutely necessary for the transaction of the Government business at this point.

The Sixth Auditor makes the following statement of the business of the post-office for the year ended June 30, 1889:

Gross receipts	$33,501.19
Net revenue	17,243,93

The amount of money-orders paid and issued last year approximated $———. There are fourteen employés in the post-office, and a large increase is required for the proper transaction of the business. A considerable portion of the wholesale stocks of merchandise in the city are imported direct without breaking bulk. Some pass through in bond, which necessitates the stationing of a weigher of customs at this point.

Atchison is also the location of the United States pension examining board, and the natural commercial center of a large collection district under the internal-revenue system.

The net proceeds of the post-office can with reasonable certainty be expected within the period of five years to pay the entire amount provided for in this bill.

In view of these facts your committee are of the opinion that a public building should be erected at Atchison, Kans., for the accommodation of the post-office and other offices of the Government now or hereafter to be located at said place, and they therefore unanimously recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 219.

PUBLIC BUILDING AT HOULTON, ME.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Milliken, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 417.]

The Committee on Public Buildings and Grounds, to whom was referred the bill to provide for the erection of a public building at the town of Houlton, Me., submit the following report:

The committee finds that the customs collection district of Aroostook, Me., comprises an immense area of territory of 6,800 square miles on the northeastern boundary of the United States, lying adjacent to the province of New Brunswick, and that its officers are intrusted with the guarding of a frontier line of more than 250 miles in extent, with headquarters at Houlton, the shire town of the county, situated at the terminus of the branch of the New Brunswick Railway, and with stations at Fort Fairfield, Van Buren, etc.

The custom-house and post-office are now both located in a wooden building in Houlton, rented by the Government from private owners, and the accommodations are inadequate and insecure for the protection of the records and other property against fire.

The Aroostook customs district proves to be the only customs district in Maine in which the custom-house is situated in a rented structure, the Government having provided a public building in every other district. Aroostook is by far the most rapidly-growing county in the State in population and production, and its rapidly-increasing business with the adjacent province of New Brunswick renders it an important district in our revenue system. The rapidity of the growth of the section may be gathered from the following facts:

In 1870 the district contained 29,453 inhabitants; in 1880, 41,393, an increase in ten years of 11,940, or over 40 per cent. increase in population to 1880, and the total now probably exceeds 50,000 people.

The receipts of customs show a much greater ratio of increase, and the aggregates for eight years are shown by the official records to be as follows:

Amount of receipts from June 30, 1879, to June 30, 1887	$203,802.15
Amount of expenditures from June 30, 1879, to June 30, 1887	73,169.08
Net receipts above expenditures for eight years	130,633.07
Amount of receipts year ending June 30, 1878	8,438.18
Amount of receipts year ending June 30, 1888	45,286.68

The shire town, Houlton, is the natural center of business for that entire section of country, comprising a thickly-settled frontier of over 250

miles, and is rapidly increasing in population and business, the inhabitants being now estimated at 6,000. Within a few years numerous industries have been established there, many buildings have been constructed, and systems of water-works and electric lighting have been introduced. It is believed that the post-office is now used by 12,000 people in Houlton and the adjoining towns.

Two branches of the New Brunswick Railway enter the district from Canada, one at Houlton and the other at Fort Fairfield, the latter extending into the district 29 miles to Presque Isle. The main line of the New Brunswick Railway extends along the northern boundary a distance of 40 miles, with several trains each way daily, carrying freight into the United States or for transit through Canada between Houlton, Fort Fairfield, and Vanceborough, all of which have to be inspected, manifested, etc. During the past year a new line of railway has been surveyed and work is expected to commence in the spring of 1890 on a line that will bring Houlton nearly 100 miles nearer the Boston market. The opening of this road will undoubtedly add great impetus to the growth of the district in population and business. The county is as large as Massachusetts, containing the finest farming and timber lands in the State, and it is filling with immigration from Canada and other places. From the geographical position Houlton is a most important point on our frontier revenue service, and must constantly become more so. The need of suitable and permanent accommodations for the custom-house and post-office is strongly urged and apparent.

A similar bill was favorably reported by the Committee on Public Buildings and Grounds in the Forty-eighth and Forty-ninth and Fiftieth Congresses, and passed by the Senate, but failed of passage in the House through not being reached on the calendar.

Your committee therefore recommend that the bill do pass with the following amendment, viz: Strike out in line 12 the words "seventy-five" and insert in lieu thereof the word "fifty."

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 220.

PUBLIC BUILDING AT LYNN, MASS.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Lehlbach, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 448.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 448) for the erection of a public building at Lynn, Mass., have had the same under consideration and respectfully submit the following report:

In the Fiftieth Congress the Committee on Public Buildings and Grounds reported favorably a bill authorizing the erection of a public building at Lynn, Mass. The consideration of this bill was not reached in the House. The following is an extract from the report made in the Fiftieth Congress:

The city of Lynn is on the sea-coast, 9 miles east of Boston. It is the largest center in the world for the manufacture of ladies' boots and shoes, in the transaction of which it has 600 manufactories, employing 10,500 workmen, with a capital of $13,000,000. The annual sales are $35,000,000.

The population in 1860 was 19,083; the population in 1880 was 38,284; the population for 1885 was 45,864.

The official records for 1882–'83 show that 796 factories and dwellings were erected. The municipal receipts for 1883 were $522,000.

Two hundred and forty-seven tons of freight arrived by rail daily, requiring 67 freight cars in the handling, and this amount is rapidly increasing.

Five hundred and thirty-nine vessels arrived at the port—which is a branch customs district—39 of which were foreign (British provinces), from which the deputy United States collector received $2,670.38.

If a public building is erected in Lynn a suitable and convenient office for the transaction of public business will be provided in it for the deputy collector.

Seventy-seven trains of passenger cars arrive daily from Boston and the East. It has horse-railroad service with the cities of Boston, Chelsea, and Salem, and the adjoining towns of Peabody, Saugus, and Swampscott; the two last, with Nahant and Lynnfield, are almost to be considered parts of Lynn, and have a population of 10,000.

The post-office is of the first class; it is located in a building, with a theater above, never intended for such purpose, in the business center, in the midst of large blocks furnished with power and heat from engines and boilers located on the premises; there is constant danger from fire. The rent is $1,800.

The present population of Lynn is estimated at 50,000. The gross postal receipts are over $60,000. A large portion of the business part of the town has recently been destroyed by fire and your committee is of the opinion that it would be sound public policy to act promptly in the consideration of this bill.

We recommend that the bill do pass with the following amendment:

In line 11 strike out the words "two hundred" and insert in lieu thereof the words "one hundred and twenty-five," and also in line 20 strike out the words "two hundred" and insert in lieu thereof the words "one hundred and twenty-five."

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The Committee on P
granting a pension to
beg leave to report:

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 222.

LIGHT-HOUSE AND FOG-SIGNAL AT CEDAR POINT, MARYLAND.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. STOCKBRIDGE, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 426.]

The Committee on Commerce, to which was referred House bill 426, to erect a light-house and fog-signal at Cedar Point, at the mouth of the Patuxent River, in the State of Maryland, have had the same under consideration and beg leave to report it back with amendment, and recommend its passage.

The recommendation of the Light-House Board on the subject is appended hereto as a part of this report:

TREASURY DEPARTMENT,
Washington, January 14, 1890.

SIR: I have the honor to acknowledge the receipt of your reference of fourteen House bills relating to light-house affairs, asking suggestions upon them from the Department.

In reply to so much of the reference as applies to House bill No. 426, which authorizes the erection of a light-house and fog-signal at Cedar Point, at the mouth of the Patuxent River, Maryland, I have to say that the establishment of the light-station and fog-signal in question is recommended by the Light-House Board, on page 91 of its annual report for 1889, an extract from which, bearing upon the matter, is herewith inclosed, together with the bill (H. R. 426) in question.

It is suggested, however, that as the bill mentions no limit for the cost of the light-station, that it will be well to add to it the following, the amount being the same as that mentioned in the Board's annual estimates and in its annual report, viz: "at a cost not to exceed $25,000."

Respectfully, yours,

GEO. S. BATCHELLER,
Acting Secretary.

HON. CHARLES S. BAKER, M. C.,
Chairman, Committee on Commerce.

[Extract from the Annual Report of the Light-House Board for the fiscal year ending June 30, 1889, page 91.]

Cedar Point, mouth of Patuxent River, Chesapeake Bay, Maryland.—The following recommendation made in the Board's last Annual Report is renewed:

The harbor at the mouth of Patuxent River is the best on the western side of Chesapeake Bay. Vessels about to enter this harbor from the south pass close to Cedar Point, where the water is deep near the shore. In thick weather sounding is no safeguard, as the change from deep to shoal water is abrupt. The establishment of a light and fog-signal on Cedar Point would also be of much value to the general navigation of the bay, as most vessels pass near this point. It is estimated that a proper structure would cost $25,000.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 223.

HEIRS OF JOHN R. TREUTLEN.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2535]

The Committee on Claims, to whom was referred the bill (H. R. 2535) for the relief of the heirs of John R. Treutlen, report back the same and recommend that it do pass.

For the facts on which the claim is based, the following report from the Committee on Claims of the Fiftieth Congress is hereby adopted:

The Committee on Claims, to whom was referred the claim of John R. Treutlen, beg leave to submit the following report:

We have examined into the merits of the claim of John R. Treutlen for additional compensation for services rendered while an employé of the House of Representatives, and find that he was faithful and efficient, and did perform the duties of messenger from the 7th day of April, 1881, to the 17th day of December, 1881; and that he only received the pay of a laborer during the period of his service, and that Adam Reisinger, who was his predecessor, was allowed, and did receive, upon application, from the House of Representatives, the same additional compensation for the same services rendered in the Forty-sixth Congress, payment being provided for in the deficiency appropriation bill for the fiscal year ending June 30, 1881; and also that Frederick W. Steigleman was paid $116.65 by the present Forty-eighth Congress, being the difference between his salary and that of a messenger at $1,200 per annum, from July 1, 1883, to February 1, 1884, provision being made for his payment in the sundry civil appropriation bill for the fiscal year ending June 30, 1885.

The Committee on Claims, therefore, report the same back to the House, with the recommendation that the same be referred to the Committee on Appropriations, with request that said committee make provision for the payment of the same in one of the appropriation bills, namely, $333.33, which amount the Committee on Accounts of 1882 recommended be paid, and sent to Appropriations Committee, but was received by said committee after all the bills were reported, and too late for action.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 224.

CHEROKEE INDIANS.

February 17, 1890.—Committed to the Committe of the Whole House on the state of the Union and ordered to be printed.

Mr. Skinner, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6225.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 6225) to re-imburse certain Cherokee Indians for transporting themselves from North Carolina to the Indian Territory, and subsisting themselves there for one year after their arrival, having considered the same, report:

The New Echota treaty, December 29, 1835, between the United States and the Cherokee Indians, and an act of Congress approved July 29, 1848, provided for the removal of the Cherokee Indians residing east of the Mississippi, to the Indian Territory, and their subsistence there for one year, and permitted such individual Indians as desired to remove and subsist themselves to do so, at the rate of $53.33 per capita, to be paid to them from a fund set apart for that purpose.

This fund, by acts of Congress, March 3, 1875, and August 16, 1876, was diverted from this use and applied to the education, civilization, and improvement of the Cherokees remaining east.

Before the ratification or these last-mentioned acts of Congress a large number of these Indians had removed and subsisted themselves, in accordance with the terms of the said New Echota treaty, but have never received the sums of $53.33 to which they were individually entitled.

Their claims and proofs are on file in the office of the Commissioner of Indian Affairs, and the appropriation provided in this bill has been recommended by two Commissioners of Indian Affairs, H. Price and J. D. C. Atkins. (See Ex. Doc. 208, Forty-eighth Congress, second session, and Ex. Doc. 84, Forty-ninth Congress, first session, hereto appended.)

The committee is of the opinion that the United States is bound by its treaty obligations to pay these claims, and inasmuch as the fund which was set apart for that purpose has been applied to other uses by Congress since these claimants removed and subsisted themselves, and without their consent, that the said claims should be paid out of any money in the Treasury not otherwise appropriated.

But the committee is of the opinion that those Indians who still remain east and have not availed themselves of the permission to remove themselves to Indian Territory, and taken the benefit of the new use to which the removal and subsistence fund was diverted by Congress should not now be allowed to remove and subsist themselves at the expense of the United States.

Wherefore the committee recommend that the bill be amended by striking out all after the word "removal" in line 46 down to and including the word "Territory" in line 50, and that the bill so amended pass.

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bill hereafter to be acte
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able consideration, is als
Very respectfully,

The SECRETARY OF TE

SIR: I have the honor
Washington, D. C., Janu
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Stats., p. 264).
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Cherokees (7 Stats., p. 482
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By the third article of t
the sum of $600,000 was all
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tion whether the amount e
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at a greater rate than $33.3
The fourth section of the
of War to ascertain the nu
Echota treaty (May 23, 183
equal to $53.33 for each ind

the balance of this fund, after certain payments therefrom, was placed to their credit upon the books of the Treasury Department, to bear interest at 5 per cent. per annum; and the Secretary of the Interior is authorized to use annually, for agricultural implements and for educational purposes among said Indians, so much of the principal of said fund as with the interest annually accruing thereon shall amount to $6,000.

In view of the fact that Congress has determined the uses to which this fund must be applied, and the Indians are without means for their removal, I am of the opinion that Congress should furnish the necessary means to enable the Department to effect their removal as stipulated in the eighth article of their treaty of 1835.

I therefore respectfully recommend that Congress be requested to appropriate out of any moneys in the Treasury of the United States not otherwise appropriated the sum of $20,000, or so much thereof as may be necessary to pay the cost of the removal and subsistence of those members of the tribe who have removed, as well as those who may hereafter desire to remove, at the rate of $53.33 per head.

I inclose herewith a draft of an amendment to be incorporated in the deficiency or sundry civil bill hereafter to be acted upon by Congress.

Very respectfully,

H. PRICE,
Commissioner.

The SECRETARY OF THE INTERIOR.

WASHINGTON, D. C., *January* 2, 1885.

SIR: Please find inclosed a list of claims of North Carolina Cherokees, who have removed from North Carolina to the Indian Territory, for the cost of their removal and subsistence under the eighth article of the treaty of December 29, 1835.

The majority of these claims were filed in your office November 20, 1877, and the balance in March and April, 1878. The evidence in these cases is on file and they are ready for payment. I respectfully request that you call the attention of the Appropriation Committees of the Senate and House to these claims and recommend their early payment. The cost of removal and subsistence of a part of those who removed from North Carolina to the Indian Territory was paid out of the civilization fund, which fund was subsequently reimbursed by Congress, as I am informed, and justice and right calls for the payment of these claims which have been pending for many years. Many of the claimants are poor and needy, and I sincerely trust that you will again call the attention of Congress to their claims.

J. M. BRYAN,
Agent and Attorney of Claimants.

Hon. HIRAM PRICE,
Commissioner of Indian Affairs.

ESTIMATE.

For this amount, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior, for the removal and subsistence expenses of those members of the Eastern Band of Cherokees who have removed, as well as for those who may hereafter desire to remove to the Cherokee country, Indian Territory, at the rate of $53.33 per head: *Provided*, That the sum of $2,930.50, expended for the removal of one hundred and sixty-one members of said band in 1881, be deducted per capita from the $53.33 for each individual, being the amount specified in the eighth article of the treaty of December 29, 1835, $20,000.

[Senate Ex. Doc. No. 84. Forty-ninth Congress, first session.]

To the Senate and House of Representatives:

I transmit herewith a communication of 25th ultimo from the Secretary of the Interior, submitting, with accompanying papers, a draught of a bill, recommended by the Commissioner of Indian Affairs, for the payment of money claimed under alleged existing treaty stipulations and laws by such Eastern Cherokee Indians as have removed or shall hereafter remove themselves to the Indian Territory.

The matter is presented for the consideration of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION, *March* 2, 1886.

the treaties and laws bearing upon the subject, together with a copy of the letter the Cherokee attorney mentioned therein, is also herewith.

The Commissioner recommends the appropriation. I respectfully request that t matter may be presented to Congress for such action as that body may find to be ri and proper.

I have the honor to be, very respectfully, your obedient servant,

L. Q. C. LAMAR,
Secretary

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 20, 1886

SIR: I have the honor to submit herewith a copy of a communication, dated Wa ington, D. C., January 20, 1886, from J. M. Bryan, attorney, inviting attention certain claims of North Carolina Cherokees for removal and subsistence money th are entitled to receive under the provisions of the treaties of 1835, 1836, 1846, and act of Congress approved July 29, 1848. (9 Stats., p. 264.)

By the eighth article of the New Echota treaty of December 29, 1835, with t Cherokees (7 Stats., p. 482), the United States agreed to remove these Indians we the price for removal being fixed at $20 and one year's subsistence at $33.33 for ea of such persons who might prefer to remove themselves.

By the third article of the supplementary treaty of March 1, 1836 (7 Stats., p. 4 the sum of $600,000 was allowed to the Cherokees in lieu of all claims of every natu and description against the United States, including the expenses of their removal

By the eleventh article of the treaty of August 6, 1846 (9 Stats., p. 873) the que tion whether the amount expended for the one year's subsistence should be paid o of Government or Cherokee funds was submitted to the Senate for decision, as al the question if the Cherokees were to pay, whether the subsistence should be charg at a greater rate than $33.33 per head.

The fourth section of the act of July 29, 1848 (9 Stats., 264), directed the Secreta of War to ascertain the number of Indians remaining at the ratification of the Ne Echota treaty, May 23, 1836, and the Secretary of the Treasury to set apart a su equal to $53.33 for each individual reported by the Secretary of War, upon which i terest was to be paid at 6 per cent. per annum on such per capita.

The fifth section provided for the payment of the $53.33 for the removal and sul sistence of such individual members as might thereafter desire to remove, upon thei removal west, which amount was to be charged to the general Cherokee fund an re-imbursed therefrom.

This fund, under the act of March 3, 1875 (18 Stats., 447), was applied for th education, improvement, and civilization of these Indians, after certain specific act and payments had been effected, and under the act of August 15, 1876 (19 Stats

sum of $20,000, or so much thereof as may be necessary to pay the cost of the removal and subsistence of those members of the tribe who have removed, as well as those who may now or hereafter desire to remove, at the rate of $53.33 per head.

I inclose herewith a draught of a bill covering the amount required to carry out the objects specified.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

A BILL for the removal of the Eastern Cherokee Indians to the Indian Territory.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That for the amount necessary to pay for the removal and subsistence of those members of the Eastern band of Cherokees who have removed themselves, as well as those who may now or hereafter desire to remove to the Cherokee Nation, in the Indian Territory, at the rate of fifty-three dollars and thirty-three cents per head, being the amount specified in the eighth article of the Cherokee treaty of December twenty-ninth, eighteen hundred and thirty-five, and the act of Congress approved July twenty-ninth, eighteen hundred and forty-eight, there is hereby appropriated the sum of twenty thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior.

WASHINGTON, D. C., *January* 20, 1886.

SIR: I respectfully beg leave to call your attention to a claim of North Carolina Cherokees, who removed from North Carolina to the Cherokee Nation, Indian Territory, about ten years ago.

The list of these claimants that I am representing is on file in the Indian Department, and every claim fully proven, as to number of persons and date of removal.

The claim is for their removal, and subsistence for one year.

Under Cherokee treaty of 1846, provision is made that all money due the Cherokees the United States Government agrees to pay 5 per cent. interest from the 12th of June, 1838.

Therefore, we think it reasonable and just that these claimants should receive interest on the several sums due them from the date of their removal west, as it was their own funds placed in the hands of the United States Government for this special purpose, and to draw interest at the rate of 6 per cent per. annum.

It has been near nine years since these claims have been presented to the Government for payment.

I also submit a report from the Interior Department, dated February 10, 1885, for your information, on these claims, and I respectfully ask that you will have their money appropriated and paid.

Very respectfully,

J. M. BRYAN,
For Claimants.

Hon. J. D. C. ATKINS,
Commissioner Indian Affairs.

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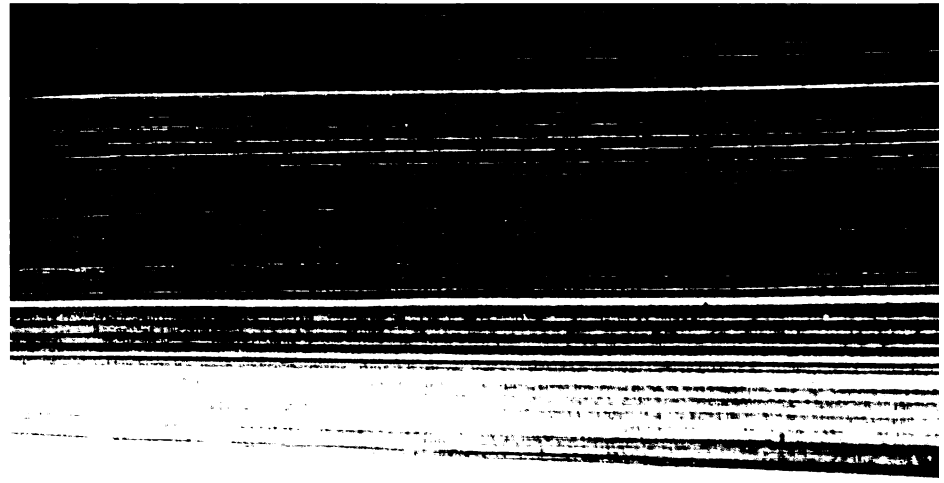


51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 225.

A. J. McCREARY.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Skinner, from the Committee on Indian Affairs, submitted the following

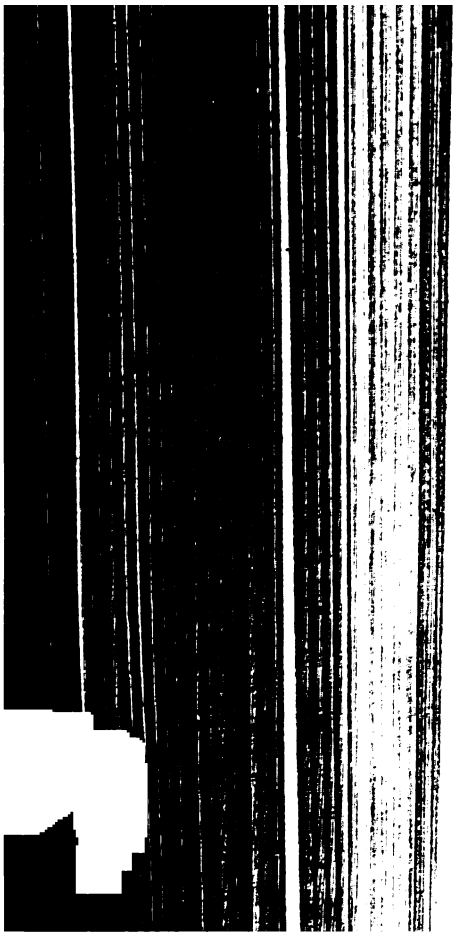
REPORT:

[To accompany bill H. R. 2527.]

The Committee on Indian Affairs, to whom was referred House bill 2527, beg leave to report:

A bill similar to this passed the Fiftieth Congress, and was presented to the President February 27, 1889, and failed to become law for want of his approval. (See bill H. R. 7924, Fiftieth Congress.)

The Committee on Indian Affairs, in the House of Representatives, Fiftieth Congress, submitted a report thereon which this committee adopts as their report and appends hereto.



Mr. PERKINS, from t

The Committee on Indi

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and Paul Akin, United
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$500,000 and $600,000. The original credit was extended upon the faith and promises of the governing body of the Indians and their head chiefs that the payment would be guarantied by the nation, and subsequently thereto there was an adjustment of the account, as hereinafter explained, between the governing council of the Osage tribe of Indians and J. M. Hiatt & Co., whereby it was ascertained that the amount of the indebtedness due to Hiatt & Co. for the necessaries thus supplied to the Indians in their destitution and distress amounted to $16,759.99. The claim as thus stated was referred to the governing council of the Osage tribe of Indians. The authority of this governing council is shown by the following action of the tribe:

OSAGE AGENCY, IND. T., *June* 2, 1876.

This certifies that at a meeting of the chiefs, councilors, and head-men of the Osage tribe of Indians, held at their council room at the Osage Agency, Indian Territory, this the 2d day of June, 1876, Joseph Pawneenopashe has been duly elected governor, and Chetopa has been elected chief councilor for our tribe, to hold their respective offices for two years from the date hereof, unless sooner removed for cause by the chiefs and head-men of the nation, or by the United States agent for the tribe, of which cause the chiefs and head-men in council assembled, by vote, or the United States agent, shall determine.

It is also agreed by the council of chiefs and head-men assembled that the governor and chief councilor elect shall, with the approval of the United States agent, appoint five leading men of the tribe, to be associated with themselves, constituting the business committee of the tribe, in the transaction of its business with the agent, and the committee thus elected and appointed are authorized to receipt for supplies and annuities issued by the agent and the Government of whatever kind; to examine and act on behalf of the tribe on all matters of claims against our tribe, individual bands, or members thereof.

The associate committee, or any of them thus appointed, shall be subject to removal at any time, and in like manner and for like cause as the governor and chief councilor may be removed, or, for like cause, may be removed by the governor and chief councilor jointly.

The governor, chief councilor, and associate committee are elected and appointed with the express understanding and agreement on their part that they shall labor faithfully for the advancement of the tribe and all its members in civilization; they shall aid in preventing any violation of law by any of our people, in the arrest and punishment of all violators of the law on our reservation; they shall aid in the arrest of any person found on the reservation with "whisky" or any other intoxicating liquor without authority of law; they shall in no case use the same themselves nor allow their people to do so.

They shall restrain their people from committing any acts of depredation, from molesting any private or public building. They shall in no case enter any of the public buildings about the agency without authority nor allow other members of the tribe to do so, and any failure on their part to comply with these regulations shall be regarded as sufficient cause for immediate removal from office.

For the faithful performance of the duties herein imposed the governor shall receive, as heretofore, a salary of $500 per annum, the chief councilor $400 per annum, and each of the associate councilors $300 per annum, to be paid from our tribal funds.

CHIEFS OF BANDS.

(Signed with an x mark:)

Big Chief, White Hair, To-wauge-he, Black Dog, Napa Walla, Nun-sa-wah-hah, Clammore, George Beaver, Strike Axe, Saucy Chief, We-kah-ke-pah-ne, Tall Chief, Wah-ti-an-ka, Town Maker, Glado-mo-sa, William Penn, Little Chief

COUNCILORS AND HEADMEN.

(Signed with an x mark:)

Mo-sho-o-logy, Hard Rope, Kaw Striker, Wash-kom-wa, Two Giver, Little Fool, Okun-tsa-wah-sko, Belvizo, Big Heart, Che-sho-wahti-an-ka, Soppa-kea, Bare Leg, Saucy Osage, Saucy Paoli, Big Elk, Olo-hoh-wah-la, Strike Axe, Epe-sousa, Little Fool, Brake Bero, Dark, Wah-tsa-woh-hea, Bad Temper, Dog Thief, Scare Dog, Nia-hah-ka, Ambitious Man, Tally, White Horn, Big Hail, Black Fist, Eagle, Iron Collar, Tsa-moie, Noisy, Wah-hah-da, Tsa-no-poh-she, White Horn, Chief Stroud, Ne-kah-ko-la, Step-Long, Man, Hard Heart, Mo-o-lah-hah, Samuel Beivenue (signed), Anthony Del Orier (signed), Che-mah-hah.

Done in my presence this 2

Official copy of proceeding
Ind. T., June 2, 1876.
Attest:

The firm of Hiatt & C
the accounts were settle
and there executed a for
and balance, and reques
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To the honorable Secretary of t

The undersigned, the gover
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Hiatt & Co. the sum of $16,75
approved June 16, 1880.

The above sum is the correc
furnished them, and which th

The accounts are correct, th
desire payment to be made as

To that end we make this re
same.

Interpreted fully and signed
Explained in our presence, O

EVIDENCE OF THE CLAIM.

The following evidence was presented in support of the claim:

KEOKUK, IOWA, *September* 8, 1885.

The honorable COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.:

SIR: I was for a number of years preceding 1880 the acting member of the firm of Hiatt & Co., duly licensed traders for the Osage tribe of Indians at the Osage Agency (Pahuska), Indian Territory.

During the year 1878 I was appealed to by Governor Joe, and nearly if not quite all of the chiefs, councilors, and head-men of the Osage tribe of Indians, to extend to the Osages a credit of from $8 to $10 per capita, promising payment out of their next annuity, which was expected to be ample for that purpose. The appeal was supported and the credit approved by Cyrus Beede, United States Indian agent for the Osages at that time, promising to use his official influence to have said firm promptly paid. I did, as acting partner of Hiatt & Co., extend to the Osage Indians credits to the amount of $16,759.99, keeping a carefully itemized account of all goods sold to each head of a family, part of a family, and individual. Paul Akin, United States interpreter, Governor Joe, Sam Bevenue, chief of the half-breeds, and other chiefs and head-men, were freely and fully consulted with as to who were the proper persons, and the amount they were entitled to of such credit. Every precaution was taken to have the credit fairly distributed to all the members of the tribe; but the next annuity, instead of being $15 per capita, as expected, was reduced to a little over $3 per capita, so that the payment of our claim out of that was impossible, and before the annuities were equal to its payment Agent Beede was superseded by an agent who has, for reasons unknown to me, constantly resisted the payment of our claim.

Finding that an appeal would have to be made to the Commissioner of Indian Affairs for its payment, in the summer of 1880 we went before the governor, chief councilors, and head chiefs, constituting the business committee of the tribe, with our books, containing all the itemized accounts, our chief clerk, Mr. Gay, and Paul Akin, United States interpreter, and after a long and careful examination of all the items composing, the amount of $16,759.99 was found to be due the firm of Hiatt & Co., as fully appears by the petitions and certificates of the business committee, chiefs, etc., herewith submitted. Since perfecting the accounts, as above stated, the desperate condition of my health and the continued opposition of the agent has delayed the payment of our claim or the proper presentation of it to the Interior Department. I have been anxiously waiting, hoping that my health would improve so that I could give it my personal attention, but now despairing of that I have secured the services of my friend, William G. Coffin, to obtain all the necessary corroborative evidence possible, after so long a delay. I do most solemnly aver that the account is just; the supplies were needed and were furnished the Indians in good faith as charged, and at fair prices, and I trust that no further delay that can be avoided will be suffered in its payment. I will say that, owing to my prostration by sickness, I have never been to the agency since the examination and adjustment of our accounts by the business committee. I was obliged to sell the store without being able to attend to closing up the business there. The books and papers were boxed up and sent to me, but for some reason, through carelessness or something worse, the book containing the itemized account of the extended credit, after the most diligent search, I have been unable to find, or the items would have been furnished. All of which is most respectfully presented.

JNO. M. HIATT.

STATE OF IOWA,
Lee County:

I, J. M. Hiatt, surviving partner of Hiatt & Co., on my oath depose and say that I am acquainted with the foregoing, and that the statements as set forth are true, as I verily believe.

Subscribed and sworn to before me, Harrison Tucker, a notary public in and for Lee County, Iowa, this 8th day of September, A. D. 1885.

[SEAL.] HARRISON TUCKER,
Notary Public.

OSKALOOSA, IOWA, *December* 1, 1885.

I certify on honor that I have examined the statement of J. M. Hiatt, of the late firm of Hiatt & Co., licensed traders at Osage Agency, Ind. T., and believe the same to be substantially correct.

I was United States Indian agent for the Osage Indians from the early part of the year 1876 to about the 20th of July, 1878. During a great portion of this time the Osages were in a peculiar state of destitution, owing to the failure of Congress to

and that the same should b
pressed wish of the tribe, a

STATE OF IOWA,
Mahaska County, ss:
Subscribed and affirmed b

Hon. COMMISSIONER OF IND

SIR: The governor of the
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I have the honor to be,

Witness:
J. H. TISDALE.

The COMMISSIONER OF INDIA

SIR: The undersigned was
with the Osage Indians at th
were at the same time (1873
aftewards Florer & Rankin, a

The Indians had become ind
an amount aggregating from
three. Finding they could no

Now, this I can say from personal knowledge, the claim of Captain Coy & Co. was on precisely the footing of the others, and as much entitled to full and prompt payment.

Respectfully,

J. M. HIATT.

I have personally and intimately known Col. John M. Hiatt, whose genuine signature is on the other page of this paper, and he is an upright man and a gentleman of undoubted veracity, and I would fully rely on any statement made by him.

SAM. F. MILLER.

The foregoing statement of J. M. Hiatt I know to be true, as I was present aiding Superintendent Hoag to pay the Indians, and heard them in full council discuss these claims and ask the superintendent to pay them, and know that Captain Coy & Co.'s claim would have been paid in full at that time but for a clerical error, which was not discovered until the distribution had been made and payment commenced. I was present at the next payment in the same capacity, when the matter was again brought up in full council and payment asked to be made in installments, the first of which was then made. The justness of the debt was questioned by no one, and I presumed it had been paid long ago.

Respectfully,

JOHN K. RANKIN.

OSAGE INDIAN AGENCY, *July* —, 1885.

I hereby certify upon honor that I, W. H. Connor, whose name is signed to a petition of the business committee of the Osage Nation asking the Secretary of the Interior to pay the late firm of Hiatt & Co., Indian traders at the Osage Agency, the sum of $16,759.99, and that said business committee made a most thorough investigation of the books and items of credits given by said firm of Hiatt & Co. to the Osage Indians in a time of emergency, it being just at the time of the failure of the last buffalo hunt on the plains, and without such extension of credit, both on the plains and at the agency, very great suffering must have been the result. We had Mr. Gay, chief clerk of said firm, with the books and accounts, both the personal accounts and the items thereof, and after a long and patient investigation were clearly of the opinion that the account as fixed and settled by us was a just account, and in justice ought to be paid.

In testimony of which I hereunto set my hand.

W. H. CONNOR.

Witness:
CHARLES B. CORNISH,
W. E. MCGUIRE.

SENECA, NEWTON COUNTY, MISSOURI,
September 2, 1885.

J. M. HIATT.

DEAR SIR: You ask if I know anything of the books and papers of Hiatt & Co., for some months previous to their being sent to you. I only know this, that when Mr. Gay, who had been your book-keeper for years, left the agency, he gave the books and papers of Hiatt & Co. into the keeping of my husband, Norris Tisdale. This was some time in 1881. They were piled up in our common living-room, accessible to everybody; in fact, many persons did come in and overhaul them. Half of them might have been taken away without my knowing it. Before Norris died he went over the papers and burnt a large number that he thought unnecessary to preserve. I have no doubt the accounts you can not find were among the papers burned, but have no knowledge of the missing books. They, or what was left of them, were boxed up and sent to your address, Keokuk, Iowa.

Very truly, yours,

FANNIE MATHES.

Subscribed and sworn to before me at my office in Seneca, Mo., this 2d day of September, 1885.

J. M. BOYD, *Notary Public.*

My commission expires November 19, 1888.

The COMMISSIONER OF

STATE OF CALIFORNIA,
San Diego Co

T. R. Gay, being duly
his own knowledge.

Subscribed and sworn t
[SEAL.]

STATE OF CALIFORNIA,
County of San Diego,

In the matter of Hiatt &

The COMMISSIONER OF IND

SIR: I recently made a s
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In the year 1880 this acc
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Axe, Black Dog, and W. H.

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At the time they examined
to do so and to act as a bu
Osage tribe of Indians.

STATE OF CALIFORNIA,
County of San Diego, s

T. R. Gay, being duly swo
scribed by him are true.

Personally appeared befor
Diego, State of California, T
subscribed and made oath to

In witness whereof I have
3d day of December, A. D. 1

This claim

Your first objection, "This investigation shows that said claim has never yet been presented to or considered by the Indian Office." I did present the claim, with all the papers and evidence now on file in the case, to the Commissioner of Indian Affairs. After some time had elapsed they were returned to me indorsed, "Barred by the statute of limitations" (or words to that effect), either on the back of the papers or on the back of the envelope containing them. I was informed verbally that the statute of limitations would be no obstruction to the consideration of the claim by Congress, and I suppose the papers being so indorsed was why the Indian committees of the Senate and House of Representatives did not refer the bill to the Indian Office for information.

The next objection is, "The claim is against individuals of the tribe and not the tribe as a whole, and therefore can not be properly paid out of the tribal fund." I beg leave to suggest that the credit was asked for by the governor, chiefs, and headmen for the entire Osage people, and not for any band, section, or part of them.

The United States Indian agent for the Osages at that time, Cyrus Beede, asked for, approved, and indorsed the extended credit for all, not a part. The evidence clearly proves that great care was taken by Hiatt & Co., in the sale of the goods, by the employment of the United States interpreter, Paul Akin, an educated Indian, and chiefs and head-men, notably Governor Joe (to whom Hiatt gave a note for $200 for services in the store during the sale of the goods), so that every individual member of all the tribe should receive their fair proportion. From the evidence on this point it is difficult to see how any claim clearly in equity and justice could be more national; it was so regarded by the governor of the Osages and Samuel Bevenew, head chief of the half-breeds, both educated and intelligent men, and all the principal chiefs and head-men of the tribe in office and authority at the time. As to their power to make payment, etc., it seems from the evidence they were the only parties acting at the time for the Osage tribe of Indians, and they did act efficiently in making the debt, and by the advice and approval of United States Indian Agent Beede, and I apprehend if Agent Beede had remained in office the claim would long since have been paid to the satisfaction of all parties. The difficulty, as I understand it, grew out of the hostility of his successor, he being averse to the payment of the claim.

As to the report of December 30, 1880, submitted to the Indian Office, gotten up, as I understand, by the agent and competing Indian traders, who considered their interests adverse to its payment; but even they don't make their seventeen chiefs signing their communication deny the existence of a debt; the worst they make them say is, quoting the secretary's communication of yesterday, "As we are not aware of our people taking but little credit there." It is not at all strange, when the extended credit was not contemplated to be more than one-half of the expected annuity of $15 per capita, and probably did not much exceed that amount, when we consider that the last buffalo hunt had proved a failure, and they had to look to other sources for next $7, $8, or even $10 per capita for clothing, breadstuff, groceries, meat, and all they would very naturally consider "they were taking but little credit there." Being very poorly able to write at all, I must submit this, imperfect as it is.

I am, truly yours,

W. G. COFFIN,
Attorney in fact for J. M. Hiatt.

PETITION TO CONGRESS.

The claim was then submitted to the Forty-ninth Congress and the following bill passed:

[PRIVATE.—No. 633.]

AN ACT for the relief of J. M. Hiatt, only surviving partner of Hiatt & Co.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to J. M. Hiatt, only surviving partner of Hiatt & Company, late traders for the Osage tribe of Indians, out of any money in the Treasury accruing to the Osage tribe of Indians by act of Congress approved June sixteen, one thousand eight hundred and eighty, the sum of sixteen thousand seven hundred and fifty-nine dollars and ninety-nine cents, or so much thereof as may be found actually due the claimant after an investigation of the fact by the Secretary of the Interior, which sum shall be in full satisfaction of the claim of the said Hiatt & Company against the Osage tribe of Indians for goods sold them on an extended credit.

Approved, July 14, 1886.

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above stated was found to b
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To the honorable Secretary of t

The undersigned, the gover
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Hiatt & Co. the sum of $16,75
approved June 16, 1880.

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The accounts are correct, th
desire payment to be made as
To that end we make this re
same.

Interpreted fully and signed.
Explained in our presence, Osa

The evidence of the then agent in support of the claim is as follows:

OSKALOOSA, IOWA. *December* 1, 1885.

I certify on honor that I have examined the statement of J. M. Hiatt, of the late firm of Hiatt & Co., licensed traders at Osage Agency, Ind. T., and believe the same to be substantially correct.

I was United States Indian agent for the Osage Indians from the early part of the year 1876 to about the 20th of July, 1878. During a great portion of this time the Osages were in a peculiar state of destitution, owing to the failure of Congress to make adequate appropriation for their support, as it had done for the two years next preceding, the item of reduction being $200,000, and at times these Indians were reduced to hunger and altogether too near nakedness.

At times during my administration, on the *earnest* and *pitiable* appeal of almost every leading Indian of the tribe (and in accordance with my own judgment as necessary, based upon actual observation of their destitution), I encouraged the licensed traders to credit them to the extent of furnishing limited amounts of subsistence and clothing to relieve suffering, trusting the promises of the Indians to settle these accounts at times of annuity payments, knowing full well that the tribe had ample funds at the disposal of the Government (whenever the same could be made available) to meet all such liabilities without embarrassment.

The precise amount of credit given I am unable to state at this time without access to data not just now at hand.

That portion of this debt contracted during my administration I believe to be just, and that the same should be paid out of Osage funds, in accordance with the expressed wish of the tribe, all as I very believe.

CYRUS BEEDE.

STATE OF IOWA, *Mahaska County, ss:*

Subscribed and affirmed to before me this 3d day of December, 1885.

F. E. SMITH,
Clerk District Court, a Court of Record.

OSAGE AGENCY, IND. T., *August* 20, 1880.

HON. COMMISSIONER OF INDIAN AFFAIRS:

SIR: The governor of the Osages and a number of the chiefs have directed or petitioned the honorable Secretary of the Interior to pay a claim of $16,759.99, due to Hiatt & Co. from said tribe.

As chief of the half-breed band, and having a better knowledge perhaps of the origin and character of said claim than any other chief, I unite with them in earnestly asking that the claim be promptly paid as requested. The Indians and others were led to believe that the payment of about $15 per head in January, 1878, would be continued at substantially that sum. In that belief I advised H. & Co. to give the Osages a credit for half the sum, knowing that it would greatly accommodate the Indians, and believing it would be entirely safe; but the subsequent payment and later ones, instead of $15, have been but little over $3 per head. Their present needs absorbed this small sum at once, so there has been no time at which it was possible to pay a debt made in good faith, and of which they reaped the full benefit. Knowing their ability to pay their debts, and grateful for the accommodation, the honor and self-respect of the Osages is concerned in the quick and full discharge of the debt.

I have the honor to be, your obedient servant,

SAMUEL BEIVNEW,
Head Chief of Half-Breed Band.

Witness:
J. H. TISDALE.

The claimant is a resident of Keokuk, Iowa, and is a confirmed invalid, and could not appear before your committee, or furnish an itemized statement of his accounts, for reasons stated in the affidavit; but Hon. Samuel F. Miller, of the Supreme Court, assured your committee that he was a man of unquestioned integrity, and would not, in his judgment, press an unjust account.

Your committee are fully convinced that the Indians are indebted to the claimant in a large sum, and that it is their desire to pay the amount due, and as they have more than $5,000,000 in the Treasury of the United States, your committee recommend the passage of the bill with an amendment.

The affidavit of Samuel Beivnew, head chief of the half-breed band, is also reported herewith as evidence of the bona fides of the claim, and the claim having been investigated and found correct by the business committee of the Indians may be accepted as an account stated.

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UNITED STATES INDIAN SERVICE,
Osage Agency, Ind. T., October 28, 1886.

Paul Aken says:

I was not present when the books and accounts of Hiatt & Co. were examined, nor do I know whether or not they were examined. I believe there was something due Hiatt & Co., but I do not know the amount. I did help to issue the goods, and explained to the Indians the credit they were getting. When I signed the certificate dated August 17, 1880, I did not understand it to mean that I was acquainted with the details or amount, but only the general facts that they had a credit. I did not see W. P. Adair at the time, as I was not there when the certificate of the business committee was signed.

PAUL AKEN.

Witness:
JAS. I. DAVID, *United States Indian Agent.*

Sworn to and signed in my presence this 28th day of October, 1886, at Osage Agency, Ind. T.

FRANK C. ARMSTRONG,
United States Indian Inspector.

UNITED STATES INDIAN SERVICE,
Osage Agency, Ind. T., October 27, 1886.

Black Dog, chief of Osages, says that he does not believe that the Osages owed Hiatt & Co. the amount claimed. He says that he did not see the books, but he saw a number of accounts. Some of the Osages owed large accounts. I was told by the others, Big Chief, Hard Rope, W. H. Connor, and Governor Joe, that they wanted to pay Hiatt & Co., and I signed the paper with the business committee.

BLACK DOG.

Witness:
JOS. I. DAVID, *United States Indian Agent.*

OSAGE AGENCY, IND. T., *October* 28, 1886.

T. L. Rogers says the business committee that signed and recommended the claim of Hiatt & Co. were appointed by the agent, Cyrus Beede. These were put on that committee because they were favorable to the claim known as "Adair claim." There was no man on the business committee who was competent, except Connor, who could examine accounts.

There had been two national debts paid similar to this. It was distinctly understood that no other claims should be made, and that all accounts after that were to be collected at the payments and at traders' risk. This claim was before the council last fall; they refused to pass it.

T. L. ROGERS.

Witness:
JOHN MCFALL, *Clerk.*

Sworn to and signed before me this 28th October, 1886, at Osage Agency, Ind. T.

FRANK C. ARMSTRONG,
United States Indian Inspector.

OSAGE AGENCY, IND. T., *October* 2, 1886.

Mr. John N. Florer says: I was a trader at this agency at the time the claim of Hiatt & Co. was brought before the business committee in 1880. I know that Mr. Hiatt had some accounts against the Indians, but I do not know the amounts. It was generally understood that the amounts were not very large. I know also that Hiatt & Co. allowed some of the business committee, Hard Robert, Governor Joe, and others, to come into his store and make accounts at from $2 to $500. They told me that they were allowed this credit in consideration of their being members of the business committee before when Hiatt & Co. had a claim to be adjusted. Before Governor Joe died he sent for me and told me that Hiatt & Co. had promised to give $500 additional in cash when the claim that had passed the committee was paid, and asked me to see that his widow received the money. He died that day. I believe that there is due Hiatt & Co., three or four thousand dollars, and he had opportunity

to collect it, but I do not believe there is any more due. I further know that L. J. Miles, ex-agent, requested Hiatt & Co., or their representative, Mr. Gay, to bring forward their books and call the individual Indians up and he would investigate each individual account himself, and have the Indians present. This they declined to do. This claim has been before the council and they have always asked for the books and investigation, but they never could get any books.

I believe that the signatures to the certificate of the business committee were procured by the undue influence in the way of credits in store and promises of additional payments in money when the claim should be paid. The time that Hiatt & Co. claim that they could not collect their money and the Indians were suffering, I gave credit and collected all that was due me. Only a few years before, the Government, with the consent of the Indians, had paid us all claims held by traders against Osages, with the distinct understanding among us, and signed a paper to that effect, that we were to depend only upon collections from the payments and not present any more claims. Hiatt & Co. signed the agreement with me, and also Captain Coy & Co.

JOHN N. FLORER.

Test:
H. P. BRANHAM.

Sworn to and signed before me, at Osage Agency, Indian Territory, October 28, 1886

FRANK C. ARMSTRONG,
United States Indian Inspector.

Upon this meager evidence the inspector made the following report:

ARKANSAS CITY, KANS., *November* 2, 1886.

Hon. L. Q. C. LAMAR,
Secretary of the Interior:

SIR: In accordance with instructions from your office, I have been to the Osage Agency and investigated as far as possible the circumstances attending the examination of and passage by the business committee of the Osage council, 1880, the claim of Hiatt & Co. against the Osage tribe.

From the papers placed in my possession giving a full history of the claim and all the evidence given the committee of Congress on which the two reports were based and payment recommended, the claim appears just, and Hiatt & Co. are entitled to pay therefor. Experience having taught me that the indorsements by Indian delegations and councils where large claims have been made by white men are sometimes obtained by improper influences, I thought it best to ascertain the manner of examination made by the business committee of the books and accounts of Hiatt & Co. I am of the opinion that there was no close or careful investigation made by the committee or any members thereof of the accounts or books of Hiatt & Co. That Mr. Gay, the chief clerk and book-keeper of Hiatt & Co., merely presented his statement, and that Governor Joe and some others had been influenced by promises of money and credit to agree to sign and use their influence to get others to sign it. There was no man representing the Osages on the committee who could read or tell anything about an account if it had been shown him, except W. H. Connor. He says in his statement, made November 1, 1886 (yesterday), that no examination was made of the books or accounts. (See his statement inclosed, marked A.)

His character for integrity or truth is very doubtful, and no man who knows him would rely upon him. He also says that he does not remember seeing Col. W. P. Adair present at that time, although he was at the agency. He says also that had the claim been properly investigated it would have passed the committee. This same claim has been thrown out and disapproved by the council since, because no book or papers could be produced for examination.

I came via Keokuk, Iowa, and there called on Mr. Hiatt. He is an invalid, as represented, and broken up generally. He says his books were left in Mr. Tisdale's keeping, who died. His widow shipped the books to Keokuk, and that they were partially destroyed, and at present no information can be gleaned therefrom, so that it is impossible to go into an investigation of the books or accounts.

Paul Akin, interpreter, whose first certificate great stress is laid upon, now says that he was not present when the books, etc., were before the business committee, although his former certificate, filed with the original papers, distinctly says he interpreted and advised in the case and investigation, and also that he knew the amount to be correct. This man understands English, is a half-breed, and can read and write. He knew what he was signing on both occasions, but on the last I put the questions directly to him, and from his looks and conduct at the time I am of the opinion that but little weight can be given his opinions or statements where his interest is at stake, and in this case I believe he has an interest. See his affidavit, marked B, and then read the one printed in the report of Congressional committee.

The last I believe to be nearly the truth; that is, leaving out the part where he says he did not know what he was signing. He did know very well.

Black Dog, I believe, has stated the truth in this statement, made October 27, 1886, before me. (See inclosure marked C.) He cannot read, and only signs his name. He could not have examined or understood the accounts or books. He stated to me that W. P. Adair was not present.

T. L. Rogers is an intelligent and educated half-breed. He is the judge for the Osage tribe under the council. He is well posted as to all the affairs of the Osage people. The claim he speaks of as the "Adair claim" is a very large one, outside and a together different from the Hiatt claim, but it seems some of the parties interested in the passage of the Hiatt claim are also interested in this "Adair claim" (see Rogers's statement, marked D, inclosed). I inclose herewith a statement of John N. Florer, formerly trader at Osage Agency, and at present clerk for Mr. Branham, trader at Osage Agency and the Gray Horse store (see inclosure marked E.) Samuel Beivnew, the half-breed, is dead. His widow says nothing was promised him by Hiatt & Co., but that he worked for Hiatt. She believes the claim just, and so did her husband.

There is no way of getting at the amount actually due Hiatt & Co., though I believe there is something due, but not one-half that is claimed. I am satisfied that there never was any examination of the books or accounts of Hiatt & Co. by the committee. I do not believe W. P. Adair was present at any investigation or even conversation relative to the affair. W. H. Connor may have known the amount he recommended in the certificate, but no other member did. I believe the certificate of the business committee was obtained by corrupt influences and promises to pay, and that no one who was competent even looked over the books or papers of Hiatt & Co., representing the interest of the Osages in the matter. I believe that the amount was stated sufficiently large to pay Hiatt & Co. whatever might be due, a few thousand dollars, and also to cover all fees, promises, etc., to the parties getting it through the committee and Department.

I return herewith the papers sent Inspector Gardner and receipted for by me.

Respectfully,

FRANK C. ARMSTRONG,
United States Indian Inspector.

The Secretary of the Interior being in some uncertainty as to the proper course to be pursued, communicated the facts to the President, who, on January 18, 1887, submitted the whole subject to Congress (Executive Document No. 35, Forty-ninth Congress, second session).

To the Senate and House of Representatives:

I transmit herewith a communication of the 7th ultimo, from the Secretary of the Interior, submitting, with accompanying papers, a draft of a bill "for the relief of Hiatt & Co., late traders for the Osage tribe of Indians, and for other purposes."

The matter is presented for the consideration of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION,
January 18, 1887.

DEPARTMENT OF THE INTERIOR,
Washington, December 7, 1886.

The PRESIDENT:

I have the honor to submit herewith copies of the papers in the matter of the claim of J. M. Hiatt, surviving partner of Hiatt & Co., late traders for the Osage tribe of Indians, amounting to $16,759.99, for goods alleged to have been sold to the Osage Indians during the year 1873.

The claim came before this Department for settlement under the act (private) "for the relief of J. M. Hiatt, only surviving partner of Hiatt & Co.," approved July 14, 1886 (Pamph. Stat. 1885–'86, page 199), appropriating "the sum of $16,759.99, or so much thereof as may be found actually due the claimant after an investigation of the facts by the Secretary of the Interior, which sum shall be in full satisfaction of the claim of the said Hiatt & Co. against the Osage tribe of Indians for goods sold them on an extended credit."

With the strong and favorable reports by a committee of each house of Congress, based upon what appeared to be conclusive evidence of the justice of the claim—evidence which purported to show that the claim had been carefully investigated and admitted to be just and correct by the business committee of the tribe, out of whose

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son or persons, or their legal representatives if deceased, comprising the firm or co partnership of Hiatt and Company at the time the claim accrued, in such amounts as their several interests in said claim shall be made to appear in proof satisfactory to the proper accounting officers of the Treasury.

SEC. 2. The act entitled "An act for the relief of J. M. Hiatt, only surviving partner of Hiatt and Company," approved July fourteenth, eighteenth hundred and sixty-six, is hereby repealed.

No action was taken upon this communication by the Forty-ninth Congress, and after its adjournment the Secretary of the Interior allowed and paid to Hiatt one-half the claim, viz, $8,380. This operated as an execution of the act of July 14, 1886, and Mr. Hiatt had no recourse but to again appeal to Congress, and the present bill is now pending for his relief.

Since that time Mr. Hiatt has died, but a few days before his death he made his last affidavit, which follows, together with that of other persons, in rebuttal of the inspector's report.

In the matter of the claim of J. M. Hiatt, surviving partner of Hiatt & Co., against the Osage Indians, pending before the Secretary of the Interior.

STATE OF IOWA, *Lee County, ss:*

I, J. M. Hiatt, claimant as above, on my oath state that the statement given as his conclusions of fact by Frank C. Armstrong, United States Indian inspector, in his report on said claim, are unfounded in fact. It is not true that the amount justly due on said claim was not one-half the amount claimed, but on the contrary the whole amount of said claim, to wit, $16,759.99, is just and true and was examined by the business committee, and certified by said committee to be correct; and I state that W. P. Adair was present at such examination as the friend of the Indians; that such examination was open and honest, and each of the business committee understood what he was doing and the amount of the account which he was approving, or if he did not it was his own fault through inattention.

I reiterate the statements made in my affidavit to the Commissioner of Indian Affairs, of date September 8, 1885, and my letter and affidavit of August 23, 1886, printed in Executive Doc. No. 35, Forty-ninth Congress, second session; and I expressly deny that said certificate of the business committee "was obtained by corrupt influences and promises to pay," as charged on belief in said report of said Indian inspector, and said charge is entirely without any ground in fact. It is a fact that I did, like any other business man, let some Indians have goods on credit, but only such as had an income outside their annuity, and who are worthy of credit, and whom I felt confident would pay me; but such credit was given without a thought on my part or any design whatever of corrupting them or influencing them in my favor in any way, and such credits were given bona fide with the expectation that they would be paid, as other business men, in conducting their business, give bona fide credits; and I earnestly protest that said report not only ignores entirely the evidence which I have presented proving the integrity of my account, but is not warranted by any competent evidence. The charge of corruption and bribery, not only against me but against the best men of the tribe, now dead, is based on the opinion, suspicions, and hearsay of hostile parties, and is wholly untrue.

J. M. HIATT.

Subscribed in my presence and sworn to before me by the above-named J. M. Hiatt this 13th day of January, 1888.

[L. S.] JOHN E. CRAIG,
Notary Public.

In the matter of the claim of J. M. Hiatt, surviving partner of Hiatt & Co., against the Osage Indians, pending before the Secretary of the Interior.

STATE OF IOWA, *Lee County, ss:*

I, Daniel Tisdale, of the city of Keokuk, Iowa, having been duly sworn, on my oath state that in the year 1880 I was at the Osage Agency visiting my brother, Morris Tisdale, who was sick and was postmaster at that place. I had been formerly, in 1871 and 1872, in the employ of Hiatt & Co., and on my visit in 1880 I spent a great deal of my time in their office, but was not in their employ. I knew of the examination of the accounts of Hiatt & Co. against the Osage Indians, and now pending before the Secretary of the Interior, by the business committee. It lasted several days. The head-men of the tribe, with W. P. Adair, were out and in the office exam-

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STATE OF CALIFORNIA,

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KEOKUK, IOWA, *January* 30, 1888.

DEAR SIR: I respectfully but earnestly urge speedy action in the matter of my account, as surviving partner of Hiatt & Co., against the Osage Indians, pending before your Department. I urge this the more on account of the deplorable condition of my health. I am completely prostrated, and naturally feel great solicitude that this matter shall be disposed of before my life closes.

I respectfully submit the following considerations: In view of the well-settled law as to the rights and obligations of surviving partners, the intervention of Mrs. Leighton and her attorney should have no influence in the determination of this matter.

There is no evidence published, worthy of consideration, which impeaches the integrity of the claim.

I can not discuss the report of Indian Inspector Frank C. Armstrong and the nature of the evidence upon which it is based. My attorney will do that if necessary. But I wish to say that no good lawyer will say that said report is warranted even by the so-called evidence on which it seems to have been based. It completely ignores the whole evidence in favor of claim, given by those who knew the facts, and who have always been deemed worthy of credit (except by the author of this report). Most of his conclusions are based on hearsay—much of it second-hand hearsay at that—and from a rival trader, a hostile agent, and others who are now unwilling to pay an honest claim and are interested in the fund out of which it is to be paid, and some of his conclusions have no support even by this kind of evidence. For example, the affidavit of T. L. Rogers gives no shadow of excuse for the gratuitous assumption of the inspector in his report "that some of the parties interested in the passage of the Hiatt claim are also interested in the Adair claim."

The inspector seems to have absorbed every suspicion and taken everything for granted against the integrity of the claim. I am not responsible for the appointment of W. H. Connor on the business committee or of Paul Aken as interpreter. The Indians now, after they have received the benefit, are interested in defeating the payment of the claim; and those from whom the inspector seems to have sought information are interested in making the Indians believe that they are their friends, and those who know the facts from the beginning to the end of the transaction, including the best of the Indians, are dead. The inspector, on his way to the agency, called on me here in Keokuk, and found me prostrated on a sick-bed, and then went on and made his so-called investigation, and then without a single inquiry of me or my attorney as to any circumstances which he might have deemed suspicious, without giving us any opportunity of explanation whatever, without a word or intimation to me or my friends, embodied in his report a charge of deliberate and palpable corruption against me. I submit that this was most unfair and unjust, and was not the way to elucidate the truth.

Very respectfully, yours,

J. M. HIATT.

The SECRETARY OF THE INTERIOR.

I have known J. M. Hiatt intimately and well for thirty-five years, and he is an honest man. He is bed-ridden and has been for several years. I do not doubt the justice of his full claim. I urge its payment.

SAM. F. MILLER.

I concur.

JAMES F. WILSON.

I have known Mr. Hiatt for many years, and am sure he would make no claim he did not believe just. I have had some knowledge of his claim, and think there is equity in it. He is now old and in feeble health, and I will be glad if speedy action can be taken.

Respectfully,

W. B. ALLISON.

I am familiar with this claim and have not the slightest doubt of its absolute justice. Every dollar of it ought to be paid.

D. W. VOORHEES.

It will be seen that the evidence taken by the inspector, Armstrong, is nearly altogether hearsay, and he himself discredits the evidence and impeaches the character of nearly every witness who makes a material statement. The report itself is merely a matter of opinion, belief, or suspicion. Not only this, but the whole statement is refuted by the evidence submitted by Hiatt.

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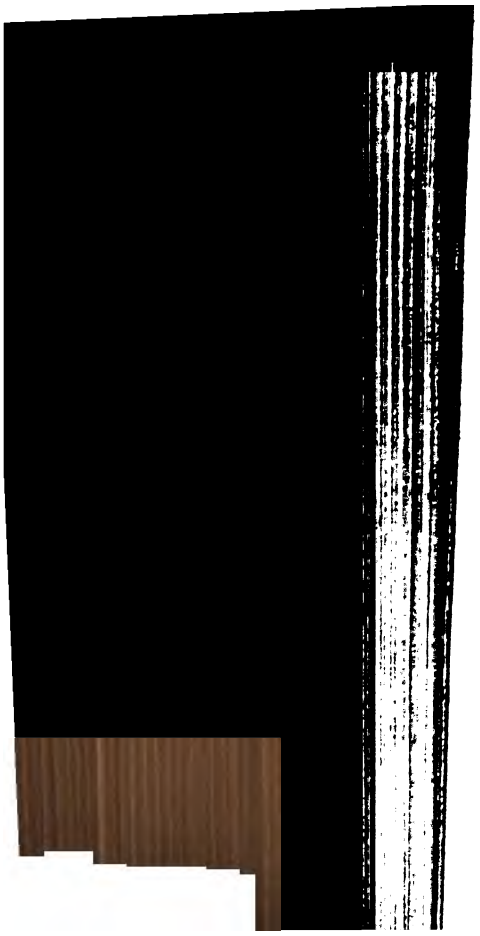
the circumstances or facts which had been gathered from the parties who had succeeded to the situation, and who were either hostile to Hiatt or interested in defeating his claim. The situation, the circumstances, and the parties had completely changed. Not only is there evidence that the new Indian agent was inimical to Hiatt and anxious to defeat his claim, but the Indians are not so much unlike white men but that they can be easily induced to repudiate and deny a claim, however just and meritorious it was, especially if it has become old. There is, besides, very satisfactory evidence that some of the council of Indians who recently objected to the claim and induced the Indian agent, as he says, to send their protest against the claim to the Commissioner of Indian Affairs, were not sincere and were governed by a desire to be paid for their assent and approval of the claim, and would have withdrawn all objection upon payment of a small sum of money.

The report of the Indian inspector, Armstrong, contains inherent evidence of its own insufficiency. It consists of "opinion," "belief," and suspicion, and discredits the very witnesses on whose hearsay statements such opinions are based. It is not sufficient to affect the clear and legal proof of the original statement of the account, made by duly constituted authority and under circumstances which entitle it to credit and belief, and which would stand as competent and satisfactory evidence in any court of law or equity. The character of Mr. Hiatt is above suspicion, and his integrity is vouched for by Mr. Justice Miller, of the Supreme Court, and Senators Allison and Voorhees.

The action of the Department in reducing the amount just one-half was evidently the result, not of belief of the existence of any fraud, but of some slight uncertainty, consequent upon the inspector's report, and from the idea that the account could be docked on general principles. But the slight effect of the inspector's report has been overcome by the later affidavits filed in the case.

In view of the whole case the committee recommend the passage of the bill.



51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 226.

PENSIONING PRISONERS OF WAR.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Morrill, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 319.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 319) for pensioning prisoners of war, submit the following report:

This bill received favorable reports from the Committee on Invalid Pensions in the Forty eighth, Forty-ninth, and Fiftieth Congresses. All the arguments urged then apply with equal force now. Indorsing the views then submitted, your committee recommend the passage of the bill.

PENSIONS TO PRISONERS OF WAR.

FEBRUARY 26, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. TURNER, from the Committee on Invalid Pensions, submitted the following as the

VIEWS OF THE MINORITY:

[To accompany bill H. R. 319.]

The minority of the Committee on Invalid Pensions beg leave to submit the following report, accompanying the majority report, on House bill 319:

They are unable to find sufficient reason for pensioning the prisoners of war as a class by themselves or for preferring them in pension legislation to other Union soldiers. Every soldier who, by reason of casualties, hardships, privations, or suffering, entailed by confinement in Southern prisons, is now incapacitated for the performance of manual labor, is already provided for under the existing pension laws. The fact that a soldier was confined in a Southern prison, goes far under the present practice of the Pension Office to show that any disability under which he may be suffering was contracted in the service of his country. The ex-prisoner of war now stands upon the same level, as we believe he ought to stand, with his other comrades in arms. He receives the same pension for the same disabilities, and any added difficulty that he might have in proving the cause of his disability by reason of the lack of hospital records during his confinement in the Southern prisons is at least equalized by the liberal policy of the Pension Office above cited. If the ex-prisoner of war has not suffered in health by reason of his confinement, we see no reason why he should receive a pension denied to other soldiers.

While it is a matter of history that the suffering of the prisoners of war during their confinement was very great, they were at least spared the danger of the battle-field, and the weariness and toil of forced marches, and other hardships and privations endured by their companion soldiers in the hard-fought campaigns that closed the war. The minority of your committee believe that captivity, like wounds, sickness, and death are but the usual incidents and accompaniments of warfare, contingencies that must have been anticipated by any soldier at the time of his enlistment, and that the victims of such captivity deserve no higher consideration at the hands of their country than others of her soldiers who suffered equally in her defense.

The minority find still graver objections to the second section of this bill. The proposition to pay $2 per diem to each of the surviving prisoners of war seems to them an injustice to other veterans of the war. They desire to call the attention of the House to the fact that when

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 227.

SALE OF PROPERTY IN PITTSBURGH, PA.

February 17, 1890.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. Williams, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 753.]

The Committee on Military Affairs have considered House bill No. 753 "authorizing and directing the sale of certain property belonging to the United States situate in Pittsburgh, Pa., and recommend that it do pass for the following reasons.

The property in question constitutes a proportion of what was originally Fort Fayette, situate on the banks of the Allegheny River. By an act of Congress approved August 2, 1813, all of the property originally owned at this place by the United States was authorized to be disposed of by public sale, and subsequently all was so disposed of excepting the portion now embraced in this bill. This has been for some years under the control of the Quartermaster's Department. It has on it a two-story brick house and some other buildings of no importance.

Owing to the growth of the business portion of the city of Pittsburgh the property has now become very valuable and would command a high price in the market if exposed to sale. As long ago as 1874 this property was the subject of special examination and report by the Quartermaster's Department. In a communication dated June 2, 1874, addressed to the Adjutant-General, C. G. Sawtelle, quartermaster and brevet brigadier-general of the United States Army, who had made a special examination of this property, reported as follows:

> The whole property is centrally located, is admirably adapted for business purposes, and is very valuable. There seems to be no probability of it ever being needed for military purposes. I am therefore of opinion, and I recommend, that the whole property be sold at public auction, after due public notice, so soon as requisite authority therefor can be obtained.

Following this report Quartermaster-General M. C. Meigs, in June, 1874, in his report to the Secretary of War, made the following statement:

> As this real estate of the United States is said to be worth $100,000, and is not now needed for use of the Quartermaster's Department, it is believed to be advisable that the question of its sale at public auction should be submitted to Congress. Six per cent. of the estimated value of $100,000 is $6,000 per annum, which is probably greatly in excess of what the rent of any quarters and store-houses needed in the future at Pittsburgh will cost.

This report to the Secretary of War was sent to Congress with the favorable indorsement of the then Secretary of War, the honorable William W. Belknap. For some reason or other no action was taken by Congress in the premises.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 228.

ROAD TO NATIONAL CEMETERY, PORT HUDSON, LA.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. ROBERTSON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 389.]

Your committee, to whom was referred House bill (H. R. 389) to construct a road to the national cemetery at Port Hudson, La., having considered it, respectfully report the bill favorably, with the following amendment:

In line 3, section 1, strike out the words "twenty-five thousand" and insert the words "*thirteen thousand five hundred*," and as thus amended they recommend that the bill pass. The reports of the Quartermaster-General and Secretary of War are hereto appended and made a part of this report.

WAR DEPARTMENT,
Washington City, January 25, 1890.

SIR: I return herewith H. R. 389, "To construct a road to the national cemetery at Port Hudson, La," referred to this Department on the 18th instant, and invite attention to the inclosed report of the Quartermaster-General, dated the 21st instant, in whose views I concur.

Very respectfully,

REDFIELD PROCTOR,
Secretary of War.

Hon. B. M. CUTCHEON,
Chairman Committee on Military Affairs, House of Representatives.

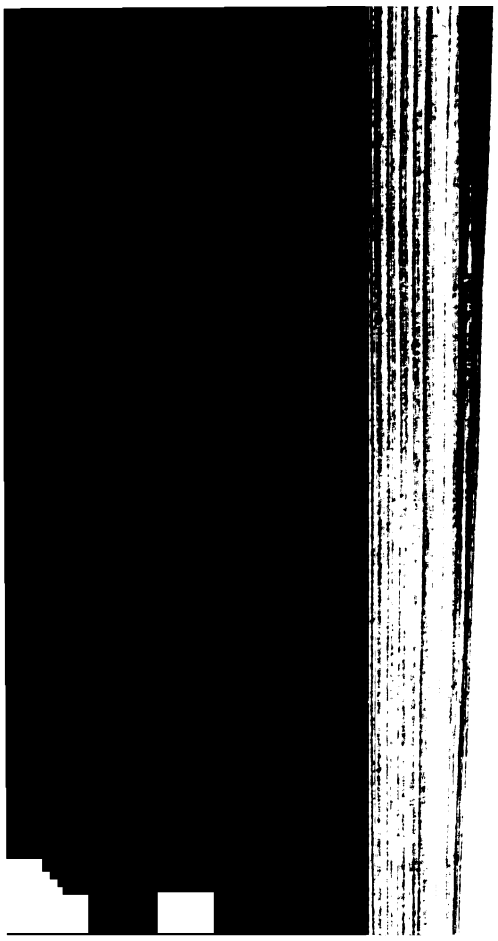
WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., January 21, 1890.

SIR: I have the honor to return herewith a copy of bill H. R. No., 289, Fifty-first Congress, first session, "To construct a road to the national cemetery, at Port Hudson, La.," submitted by the Hon. B. M. Cutcheon, chairman of the Committee on Military Affairs, U. S. House of Representatives, with request for your opinion in relation to the proposed legislation, and for some estimate of the necessary cost per mile.

The Port Hudson, La., national cemetery (2 class) is situated about two miles southeast of Port Hudson, La., and contains about 8 acres of land.

Number of interments 3,827.

August 23, 1889, the civil engineer, Quartermaster's Department, submitted in compliance with instructions from this office a report of survey for proposed road from the national cemetery, near Port Hudson, La., to the landing on the Mississippi River at Port Hickey, La., together with a sketch showing the location of that cemetry, a map of the existing road, and an estimate, in detail, of the cost of the proposed road.



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51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 229.

C. C. ROBERTS.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEST, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2041.]

The Committee on War Claims, to whom was referred the bill (H. R. 2041) for the relief of C. C. Roberts, report as follows:

The bill authorizes the Secretary of War to pay C. C. Roberts the pay and emoluments of a first lieutenant of infantry from April 4, 1863, to November 1, 1863.

Proof filed in support of the bill shows that C. C. Roberts was one of a number of officers and privates of Maine regiments who were designated by Governor Coburn, by authority of the Secretary of War, to be detached from their various regiments for promotion in the colored brigade. The order of the War Department detaching these officers and men was dated March 25, 1863. The claimant served as first lieutenant from April 4, 1863, to November 1, 1863, and was not paid for said service by reason of a failure to be mustered into service. The other officers of the colored brigade were subsequently mustered into the service and paid, the claimant failing to be mustered by reason of sickness.

Your committee is of opinion that the claimant having performed the duties of a first lieutenant he should be paid, and report back the bill and recommend its passage, with the following amendments:

In line 5, after the word "volunteers," insert the word "infantry."

In lines 10, 11, and 12 strike out "with interest at 4 per cent. on the amount due from November 1, 1863, to the day when this act shall be in force and become approved."

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 230.

CAPT. FRANCIS A. BEUTER.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Gest, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 5037.]

The Committee on War Claims, to whom was referred the bill (H. R. 5037) for the relief of Capt. Francis A. Beuter, report as follows:

The facts out of which the bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and report back the bill and recommend its passage with the following amendment:

In line 6 strike out "first" and insert in lieu thereof "fourth."

[House Report No. 2036, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 4893) for the relief of Francis A. Beuter, submit the following report:

This officer claims he was ordered and commissioned by General Banks, in 1863, in September, as a captain and recruiting officer. That pursuant to that instruction he went into the Teche country to recruit for the Fourth United States Colored Cavalry, and avers that he did report to General Weitzel as ordered, and by him ordered to take 25 recruits to New Orleans the latter part of September, 1863, and while on duty at New Orleans a few days was ordered to proceed to Texas, which he did, and reported to General Washburn; participated in the capture of Fort Esperenza, in November, 1863, and was detailed by General Washburn as commissary of subsistence, and served as such until December 25, 1863, and was then sent with General Fitz Henry Warren to Indianola, where he was assigned to duty by General Warren in command of two companies of infantry to act as post commander. In about two weeks he was relieved by two regiments. The duty at Indianola had been very dangerous and difficult to perform. He was then sent in command of 20 scouts to gather the products of the country and provide subsistence for the forces in Texas until March, 1854, when he was ordered to New Orleans as captain in the Fourth Regiment of United States Colored Cavalry, which occurred in the early part of April, and received pay only from about the 8th of April, 1864. That his petition reciting his service, and the fact that he was not mustered until April 8, 1864, is marked Exhibit A.

He files a letter from the War Department dated May 6, 1876, marked Exhibit B, giving date of muster.

Also copy of letter of Maj. Gen. N. P. Banks, stating that he believes this claimant received a provisional commission in 1863, and served under said commission as alleged; that he was a competent, faithful officer, and deserves consideration, marked Exhibit C.

Also a certificate of G. Weitzel, major of engineers, that this applicant did report to him for duty under a commission from General Banks, for the purpose of recruiting, and shortly was returned to New Orleans, marked Exhibit D.

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WASHINGTON, D. C., *Ja*

never been presented to Congress, and that his attorney had ceased his business connections in the city of Washington, D. C., and had located himself elsewhere and unknown to your petitioner. This fact has deprived your petitioner of documents which would have proved very essential in favor of his claim as herewith presented.

CITY OF WASHINGTON, *District of Columbia, ss:*

Personally came and appeared before me, the undersigned, a justice of the peace for the city and District above named, Frank A. Beuter, to me well known, and made oath that the facts set forth in the annexed petition and accompanying memorandum are true.

Sworn and subscribed to before me this 3d day of February, A. D. 1876.

LUDWIG EISINGER, *J. P.*

EXHIBIT B.

WAR DEPARTMENT,
Washington City, May 6, 1876.

SIR: Acknowledging the receipt of your letter of the 1st instant, requesting a record of the muster into the service of Capt. F. A. Beuter as captain of the Fourth United States Colored Cavalry, I have the honor to inform you that it appears from the official records that Franz (or Francis) Beuter was mustered into service as captain Fourth United States Colored Cavalry, at New Orleans, La., April 8, 1864, to take effect from that date.

He was mustered in as Francis, but signed his name to official papers, and is borne on the rolls, as Franz Beuter.

The name F. A. Beuter does not appear on the register of officers of the Fourth United States Colored Cavalry.

Very respectfully, your obedient servant,

ALPHONSO TAFT,
Secretary of War.

General N. P. BANKS,
House of Representatives.

(Indorsed:) War Department, A. G. O., Washington, D. C., May 31, 1876. Official. Thomas M. Vincent, Assistant Adjutant-General.

HOUSE OF REPRESENTATIVES,
June 22, 1876.

SIR: I transmit to you the record of Capt. Francis (or Franz) Beuter, as captain of the Fourth United States Colored Cavalry, received from the Secretary of War.

There has been some error in the record arising from mistake of names, but it is within my personal knowledge that Capt. Franz A. Beuter, who petitions for relief at the hands of Congress, is the person who was mustered according to the certificate within.

N. P. BANKS.

To General HURLBUT,
Chairman Committee on Military Affairs.

EXHIBIT C.

Capt. Francis A. Beuter was in service in the volunteer Army in Louisiana in 1863 and 1864. I am unable to give positively the dates of his service, but believe that he received from me a provisional commission September, 1863, and subsequently a commission from Adjutant-General Thomas in April, 1864. I state, positively, that I remember him in service as an officer in the Teche country, and also in Texas in 1863, and I believe he remained in Texas after my departure until the period stated by him, viz, March 27, 1864. He was, to the best of my knowledge and belief, a competent and faithful officer, and deserves friendly consideration from the Department of War.

N. P. BANKS,
Late Major-General Volunteers.

WASHINGTON, D. C., *July* 2, 1868.

EXHIBIT D.

This is to certify that Capt. Frank Beuter reported to me in September, 1863, at Vermillion Bridge, Teche country, for the purpose of recruiting colored troops, he being then on duty as a recruiting officer under a commission from Maj. Gen. N. P. Banks, as captain Fourth United States Colored Cavalry. That there being no possibility of obtaining recruits in the country around Vermillion Bridge, all the colored force available in that vicinity being required for work on fortifications, Captain Beuter returned to New Orleans. He was at my headquarters for two days.

G. WEITZEL,
Major of Engineers.

EXHIBIT E.

Neighbor's affidavit.

WASHINGTON, D. C., *ss:*

In the matter of the claim of Capt. F. A. Beuter for back pay, late a captain in Company H, of the Fourth Regiment of United States Colored Cavalry Volunteers, A. J. Whittier, aged forty-seven years, a resident of Washington, D. C., whose post-office address is 611 G street, SW., Washington, D. C., who, being duly sworn, declares in relation to aforesaid case as follows:

That I was second and first lieutenant in Squadron L, Fourth Regiment United States Colored Cavalry, and while so serving in fall of 1864, at and near Port Hudson and New Orleans, La., Franz Beuter was a captain in the same regiment, commanding Company H. I knew him by that name, and have so known him ever since. I know Francis A. Beuter, of this city, and know him to be the same identical person that I knew in the service, as above; know these facts from the service I rendered while with him in the military service of the United States.

I have no interest whatever in his claim, and am not related to claiment.

A. J. WHITTIER.

Sworn to and subscribed before me this 20th day of January, 1887.

Done at Washington, in the county of Washington, District of Columbia. I certify that I am disinterested; that the affiant is to me well known, and is reliable and worthy of all credit as a witness, and that the contents of the above affidavit were made known to him on its execution

[SEAL.]

BENJA. F. HAWKES,
Notary Public.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 231.

ADDITIONAL ASSOCIATE JUSTICE OF THE SUPREME COURT OF WYOMING.

February 17, 1890.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. Morey, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 983.]

The Committee on the Territories, having had under consideration the bill (H. R. 983) providing for an additional justice of the supreme court of Wyoming and for other purposes, respectfully recommend that the bill pass.

A similar bill passed the Senate in the last Congress and was favorably reported to the House by the Committee on the Territories. It can not be doubted that the passage of the bill would be of great advantage in the administration of justice in the Territory. The districts are very large as at present composed. If the Territory were equally divided each would be as large as the State of Indiana.

The judges, in addition to their duties as supreme court judges, are called upon to try all manner of causes arising under the laws of the United States and the Territory.

They exercise in their respective courts the powers of common-law judges and chancellors, and exercise the jurisdiction of United States district and circuit judges. In them (except the limited jurisdiction vested in justices of the peace and probate courts) are vested all the judicial powers of the Territory.

Attorneys, witnesses, and litigants have to travel, in many instances, hundreds of miles to reach the judge or court, and since the judges are not allowed traveling expenses, and railroads are few and the cost of travel very high, the expenses of this character become a great burden to all concerned, which can, in a measure, be remedied by giving the Territory an additional judge. The Territory is increasing rapidly in population and wealth, and the best interests of the people demand increased court facilities.

Another judge, as provided by the bill, would lessen the court expenses in the Territory, and not add to the expenses of the United States, except the additional salary of one justice. The Attorney-General, in a letter to the committee in the last Congress, recommended the additional justice.

The bill precludes any judge from acting as a member of the supreme court in any action or proceeding brought to such court by writ of error, bill of exception, or appeal from a decision, judgment, or decree rendered by him as judge of the district court. The evil in this respect which this bill cures in the Territory, there being but three judges, has

caused very great dissatisfaction. The three judges must act in each case in the supreme court, in order that there may always be a majority for the decision of cases and the promulgation of opinions. This requires the judge of the district court to act in the supreme court and sit in judgment on and review his own decisions. This is unfair to the judge, and it is not unnatural that it should, in the minds of lawyers and interested parties, create suspicion of collusion among the judges to sustain the opinions of each other in the courts below.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 232.

DENISON AND WASHITA VALLEY RAILWAY COMPANY.

February 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Boothman, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 856.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 856) to amend section 1 and section 9 of an act entitled "An act to authorize the Denison and Washita Valley Railway Company to construct and operate a railway through the Indian Territory, and for other purposes," approved July 1, 1886, submit the following report:

In 1886 Congress passed an act granting a right of way through the Indian Territory, from a point about 100 miles west of the northeast corner of the State of Texas, at or near Denison, in Grayson County, Tex., to a point near Fort Smith, Ark., on the eastern boundary of the Indian Territory, to the Denison and Washita Valley Railway Company. This act, among other conditions, required the company to construct at least 50 miles of the proposed road in the Indian Territory within three years from the passage of the act. About 10 miles has been so constructed and is now in operation therein. The whole line contemplated to be built in the Territory was something near 125 miles in length. The reason given why the 50 miles has not been built is the failure to secure the necessary funds, the company being composed largely of persons of limited means, who depended on the sale of the bonds of the road for the purpose of completing it.

The committee is informed that the company has now practically succeeded in making arrangements by which it can go on and complete the road and the branch road by this bill proposed to be built in a short time. The advantages claimed to result from the road when built are that it will open up the lumber region of the Red River on the one hand to the people of Oklahoma, the Indian Territory, and Kansas, while on the other it will give an outlet to the coal mines of the Indian Territory which are now in operation to the south, northwest, and western portions of that region and to the people of Texas.

Your committee are of opinion that the bill should be amended so as to require the company to complete the construction of not less than 100 miles of the proposed road and branch within the limits of the Indian Territory in three years; also, that the further privileges conferred by the bill should be given upon the same conditions and limitations as were imposed in the original act to which this bill is amendatory.

We therefore recommend that section 1 of the bill be amended by inserting at the end thereof the following proviso, viz:

Provided, That all of the rights, franchises, powers, and privileges by this act granted to said railway company are hereby declared to be, and are hereby, given, granted,

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 233.

LEGAL REPRESENTATIVES OF ADALECIA CHEATHAM.

February 17, 1890.—Committed to the Committee of the Whole House.

Mr. Boothman, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3694.]

Your committee having considered this bill (H. R. 3694), say that it is the judgment of the committee that the same should be amended as follows:

In lines 7 and 8, strike out the words "with interest from October twenty-ninth, eighteen hundred and sixty-eight." Also strike out all of said bill after the word "two" in line 18 thereof, to the end of the bill; and as thus amended the committee recommend the passage of the bill.

Your committee would further state that this claim was presented to Congress at the second session of the Forty-sixth Congress, and has been favorably reported each Congress since that time, but not acted upon, presumably, for want of time.

Your committee hereby adopt the report made upon this claim in former Congresses, which are all substantially of the same tenor and clearly set forth the facts upon which the same is based, viz:

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"Third. It is the opinion of the court, and it so charges, that the assessment of said income against the plaintiff, Adelicia Cheatham, was erroneous and illegal, and made without the authority of law. Although the court is of the opinion that the assessment was illegal, yet it thinks, and so charges, that this case depends solely upon the construction of the nineteenth section of the act of 13th of July, 1866.

"The court is of the opinion that the said nineteenth section is not a statute of limitation, as has been suggested, but it is a right given by Congress to all persons who feel that they have been illegally or erroneously assessed to sue to recover back money paid and exacted illegally, but only when they have complied with the provisions of section —— of said act. It is a condition without doing which the parties have no action.

"When a person shall deem himself illegally or erroneously assessed, before he can maintain suit in any court he must appeal to the Commissioner of Internal Revenue, according to the provisions of the law in that regard, and a decision of said Commissioner shall be had thereon, and suit must be brought within *six months* from the time of said decision, or within six months from the time this act takes effect. However, if said decision is delayed more than six months from the date of such appeal, the said suit may be brought at any time within twelve months from the date of such appeal.

"Now, if the jury shall believe, from the evidence, that the decision made by the Commissioner of Internal Revenue was made within six months from the 17th day of June, 1867, when his appeal was taken, then, under the nineteenth section of the act of 13th July, 1866, the plaintiffs must have brought their suit within six months from the date of that decision, and unless they did so they can not maintain this suit, and the jury must find for the defendant."

Although Judge Trigg decided that the assessment "was erroneous and illegal, and made without the authority of law," yet because Cheatham and wife had not brought their suit within six months from the date of the decision of the Commissioner of Internal Revenue they could not maintain their suit.

The case was appealed to the Supreme Court of the United States, heard October term, 1875, and reported in 92 United States Reports, page 85. The Supreme Court affirmed Judge Trigg's decision, and further held that as there was no appeal from the final assessment of taxes made on the 15th of March, 1868, the right of suit had not been perfected by a compliance with the conditions of the statute.

The decision of both courts against Mrs. Cheatham was upon the merest technicality.

All of the facts are detailed at length in the transcript of the record in the appeal to the Supreme Court, hereto annexed and marked "Appendix B."

This case was favorably reported by the Committee on Claims of the Forty-sixth Congress; also by the Committee on Claims of the Forty-eighth Congress, and by Senator Morgan of the Senate Committee on Claims in the Forty-fifth Congress, which last mentioned report, with the petition of Mrs. Cheatham, is hereto annexed, marked "Appendix A."

Adopting the language of Senator Morgan:

"The Supreme Court held that to entitle the plaintiffs to sue the tax collector for collecting a tax so assessed, this appeal should have been to the Commissioner of Internal Revenue, and that such appeal is essential to the right to sue.

"This is the law, as correctly decided, but this law does not establish a right in the Government to take from a citizen his money, under color of collecting a tax, without any authority of law to justify the seizure. It is not even a statute of limitations, by which a wrong is sometimes sanctioned by lapse of time. If there was no law to support the assessment or the collection when it was made, of this onerous burden, no officer of the United States could make it lawful by any act he could do or omit to do. Evidently the right of appeal to the Commissioner is not the only or even the preliminary right of the citizen to redress at the hands of the Government, when his property is taken without any color of law, and yet it may be the condition precedent on which the Government has permitted its tax-collectors to be sued, so as to bind the Government by the judgment of the courts.

* * * * * * *

"It is true beyond question that this income-tax was not supported by the law, and its collection, against the earnest written protests of Mr. and Mrs. Cheatham, carried so much money into the Treasury by duress of governmental power, to which the Government had no right. It is the rightful property of Mrs. Cheatham.

"It would not comport with the honor of the Government to retain this money upon the merely technical ground that it could not be recovered by suit.

"The argument that laches is imputable to Mr. and Mrs. Cheatham is not sound. She mistook her rights and failed to secure redress for her grievance by the merest technicality. The Government was not in any way compromised by the delay of Mrs. Cheatham to bring suit, and should not by its example encourage or incite the people to

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The assessment of the proceeds as income was without warrant of law, and its enforcement unjust.

Your petitioners respectfully ask that the said sum of $32,074, with interest, be refunded to them by your honorable body; and, as in duty bound, they will ever pray, etc.

WM. A. CHEATHAM.
ADELICIA CHEATHAM.

APPENDIX A 2.

Mr. Morgan, a subcommittee, submitted the following report upon the claim of William A. Cheatham and Adelicia Cheatham:

On the 15th of January, 1869, William A. Cheatham and Adelicia, his wife, brought suit in the State circuit court of Tennessee against Henry L. Norvell, United States internal-revenue collector, for the recovery of income taxes which they alleged had been illegally assessed and collected from Mrs. Cheatham.

On the petition of Norvell the case was removed into the circuit court of the United States at Nashville. On the trial judgment was given against the plaintiffs, and on appeal to the Supreme Court of the United States that judgment was affirmed. The record of the entire suit, as it was certified to the Supreme Court of the United States, was before the committee. It contains the deposition of Mrs. Cheatham and other evidence, and an agreement of the parties as to the facts of the case, which your committee regard as authentic and satisfactory evidence.

The facts as thus proven are as follows:

On the 10th May, 1867, John McClelland, assessor for the fifth collection district of Tennessee, made an assessment of income tax, under the act of 30th June, 1864, ch. 173, upon the proceeds of 2,877 bales of cotton raised in Louisiana during the years 1861 and 1862. This assessment was $99,726, as income tax for the year 1864. On the 17th June, 1867, Adelicia Cheatham appealed to the Commissioner of Internal Revenue from this assessment, and she and her husband also protested against it, and presented their protest to the Commissioner. The petition and protest detail very fully the history of the raising of this cotton in Louisiana in 1861 and 1862 by Mr. Joseph A. S. Acklen, formerly the husband of Mrs. Cheatham, on lands belonging to his wife (now Mrs. Cheatham) and their four children.

During these years 2,887 bales of cotton were raised on those plantations, of which about two-thirds was grown in 1861. In 1864 Mrs. Cheatham sold 1,785 bales of this cotton in New Orleans and 1,102 bales in Liverpool. This cotton was taxed, in addition to the $99,726 assessed as income tax, as follows:

Internal-revenue tax	$49,197.40
Excise tax	24,598.70
Hospital fees	14,116.80
	87,912.90

all of which taxes were paid.

The appeal and protest of Mrs. Cheatham and her husband to the Commissioner of Internal Revenue is as follows:

To the hon'l ——:

Your petitioner, Adelicia Acklen, a citizen of Davidson County, Tennessee, would respectfully state that before and during the years 1861 and 1862, and afterward, up to the date of , 1864, her late husband, Joseph A. S. Acklen, and your petitioner, as his wife, were resident citizens of the State of Louisiana, in the parish of West Feliciana. At the latter date the said Joseph A. S. Acklen departed this life, and your petitioner subsequently made her home in Tennessee. Your petitioner was and still is the owner of an undivided interest in several valuable plantations in the said State of Louisiana, the other undivided interest belonging to her four children by said Acklen, for whom she is tutrix under appointment in that State. The plantations were carried on, however, under the management and control of her late husband, and he was entitled to an undivided half of the income, acquits, and gains.

At the commencement of the year 1861 the said plantations were in a flourishing condition, and were during that year worked with reasonable diligence in the production of the great staple crop of cotton, and the yield was something like a fair average. But the difficulty of furnishing subsistence, clothing, and other necessary supplies for the fifteen hundred negroes then on the plantations increased as the year advanced, and the expenses were enormously enhanced before the close of the year. The occupation of the Upper Mississippi River by the United States troops in the fall of 1861 cut off the usual

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this result has been arrived at, but she knows that the amount is excessive, and she solemnly protests against the same, not only for the reasons suggested in her protest above referred to, but because the same is erroneous and unjust.

Your petitioner has, as rapidly as possible, obtained the necessary papers from New Orleans and elsewhere, and is now able to make a correct statement of the exact amount realized from the sales of said crops, and an approximation of the deductions to which, as she is advised, she is entitled to under the internal-revenue laws.

Your petitioner would now state that the crops of cotton of 1861 and 1862 were with great difficulty, and with great expense, preserved from destruction until the spring of 1864, when they were sent together, the crop of 1861 ginned and baled, and the crop of 1862, unginned and in sacks, to New Orleans, where the latter crop was ginned and baled.

The entire crops amounted to twenty-eight hundred and eighty-seven bales (2,887), of which, as she is informed and believes, over two thousand were of the crop of 1861, and the residue of the crop of 1862. Of these, seventeen hundred and eighty-five bales (1,785) were sold at New Orleans, and eleven hundred and two bales (1,102) were sent by way of New York to Liverpool, the cost of shipment being paid out of the proceeds of the sales at New Orleans. After paying the necessary expenses of getting the crops to market and the expenses of the sales at New Orleans, and the Government dues, including—

Internal-revenue tax	$49,197.40
Excise tax	24,598.70
Hospital fees	14,116.80
	87,912.90

the net balance of the sales at New Orleans, as shown by the account sales and accounts-current of the commission merchants (all of which can be produced if required), amounted to the sum of three hundred and twenty thousand seven hundred and thirteen $\frac{71}{100}$ dollars ($320,713.71). In the same way the net sales of the cotton made at Liverpool, between July and December, 1864, as shown by the accounts-current of Schroder & Co. (which can be produced if required), were fifty-one thousand four hundred and thirty-nine pounds two shillings and six pence (£51,439 2 6), which when reduced to Federal denomination, at 4 $\frac{84}{100}$ dollars to the pound sterling, amounts to two hundred and forty-eight thousand nine hundred and sixty-five $\frac{36}{100}$ dollars ($248,965.36). The proceeds of these sales were placed to her credit at the Rothschilds in September and December, 1864, and January, 1865. The net sales at New Orleans and Liverpool are $569,679.07) five hundred and sixty-nine thousand six hundred and seventy-nine $\frac{7}{100}$ dollars.

Your petitioner is advised that upon the supposition that these net proceeds are liable to an income-tax, she is entitled to have deducted therefrom the necessary expenses of raising the crop, the average repairs on the plantations for the years 1861 and 1862, the annual taxes for those years actually paid, the interest upon the mortgage debt on the plantations and crops, and the actual expenses of preserving the cotton from destruction.

She is also advised that if the proceeds of either of these crops are to be charged as income for 1864, she is entitled to a further deduction for the interest of the mortgage debt to the day of payment, and for the subsistence of the slaves and stock to 1864, inclusive. All these credits she has set forth in the schedule or exhibit herewith filed, marked No. 1, and made a part of this petition. The items are estimated from the best information she has been able to procure, and are, she believes, a near approximation to the truth, and under rather than over the reality. They amount, it will be noticed, to three hundred and seventy-nine thousand eight hundred dollars ($379,800). If, now, we deduct this amount from the net proceeds of sales as above, we have a balance of one hundred and eighty-nine thousand eight hundred and seventy-nine dollars and seven cents. Of this balance, for the reasons already given, two-thirds may be considered as the net proceeds of the crop of 1861, and one-third as the net proceeds of the crop of 1862, thus:

Two-thirds for 1861	$126,586.06
One-third for 1862	63,293.02

Your petitioner believes the foregoing is a near approximation to the truth, and if she is chargeable with anything it is only with the income-tax on her undivided interest in the net proceeds of the crop of 1862, and then only under the provisions of the act of Congress of 1862, not the act of 1864, which can not relate back to crops raised before that year. The crop of 1861, it is obvious, is not subject to income-tax at all, and the net proceeds of its sales were used in the payment of the debt which was a mortgage thereon.

Your petitioner submits that she ought not to be charged at all, except through the local assessors of the State of Louisiana, and then only in case all other citizens in like

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The first consideration to which the petitioner calls attention is: "That before and during the years 1861 and 1862, and afterward up to the 11th day of September, 1863, her late husband, Joseph A. S. Acklen, and your petitioner, as his wife, were resident citizens of the State of Louisiana in the parish of West Feliciana.

"At this latter date the said Joseph A. S. Acklen departed this life, and your petitioner subsequently made her home in Tennessee. Your petitioner was and still is the owner of an undivided interest in several valuable plantations in said State of Louisiana, and the other undivided interest belonging to her four children by said Acklen, for whom she is tutrix under appointment in that State. The plantations were carried on under the management and control of her late husband, and he was entitled to an undivided half of the income, acquits, and gains."

From the above statement and the terms of the Louisiana code, it appears that an undivided half of the cotton product, the sale of which in 1864 forms the basis of said assessment, passed in September, 1863, as personal property, from Joseph A. S. Acklen to his children, constituting a legacy only, and not taxable as income.

If any profit were realized by the sale of said cotton over and above the value when the same passed to the children of Mr. and Mrs. Acklen, which is doubtful, that profit would be returnable as income of the beneficiaries. As tutrix of the children, it appears Mrs. Acklen undertook the transportation and sale of all the cotton referred to, including her own. Under these circumstances it is of course necessary to follow the disposition of that portion of the cotton belonging of right to the children, but for convenience' sake the entire sales and expenses will be first considered.

I now quote from the petition a statement which leads at once to certain profits realized by the sales at New Orleans, and which appears to be borne out by the Johnson account current: "After paying the necessary expenses of getting the crops to market and the expenses of the sales at New Orleans and Government dues, including—

Internal-revenue tax	$49,197.40
Excise tax	24,598.70
Hospital fees	14,116.80

the net balance of the sales at New Orleans, as shown by the account sales and accounts current of the commission merchants, amounted to $320,713.71."

It is previously stated that the costs of shipment to Liverpool were paid out of the proceeds of sales at New Orleans, and by reference to the Johnson account it will appear that the bill of charges for shipment, insurance, etc., of 500 bales to Liverpool was $32,150, and 610 bales $40,655, which sums added to the taxes above mentioned make an aggregate of $169,716. This sum deducted from the $501,235 leaves $341,519.

Now, if the $320,713 above be deducted from $341,519, there is left $20,806 to cover Mr. Johnson's charges on sales and expenses of transportation to New Orleans.

Mr. Smiley alleges that the person who drew the petition has in some way here made a gross mistake, as he is firm in the conviction that Mr. Johnson's charges on sales above exceeded thirty thousand dollars, and refers to the Johnson account to show that not only the legitimate expenses of transportation to New Orleans were excessively large, but the expenses of counsel paid in connection with an arrest of the cotton "*in transitu*" were also very considerable.

All these expenses incident to the transportation to New Orleans are allowable deductions, and you are requested to confer with Mr. Smiley with a view to arrive at an amount which, while protecting the interest of the Government, will fully cover such expenses, so that no reasonable ground of complaint on this score can exist.

In addition to the charges covering fees of counsel, as shown in the Johnson account, and already paid, is an amount of a judgment recovered against the petitioner for $25,000 by Alexander Walker, for services in getting said crops to market, but which judgment was reversed on appeal, and the case remanded.

Under the circumstances, Mrs. Acklen wishes to be allowed to deduct $25,000, holding herself bound to return as future income so much thereof as may be avoided in the suit; but the officer thinks she is not entitled to this deduction, but will be entitled to deduct any actual portion thereof hereafter paid from future returns of income, or make claim for tax paid on amount thereof.

So much interest money as was paid by Mrs. Acklen on mortgage debt, and as was due to the year 1864, is also deductible.

The debt and interest at 8 per cent., when paid, about December, 1864, as appears, was $278,594; the interest due to the year 1864 appears to be about $16,880. The amount paid for average repairs of the various plantations, and the expense of carrying on the same, in 1864, are also among the deductions which the law allows.

Mrs. Acklen is also entitled to deduction of State and county taxes paid in 1864, as well as the national taxes above stated.

Finally, the expense of ginning and baling the cotton, not being an expense incurred in the production thereof, but rather in preparing the same for market, and part of which in fact was accomplished at the city of New Orleans after transporta-

tion, is a subject of deduction. As the major part of this expense was incurred before Johnson & Co. had any connection with the business of Mr. Acklen, and was evidently paid out of the advancements made to Mrs. Acklen by Wilson & Co., the amount will not be found in the Johnson account, and in estimating the aggregate you will be obliged to rely upon other sources of information.

Mr. Smiley has several letters from persons (some of whom are known to the office) who have had experience in such matters, which he will lay before you, by the aid of which, together with the accounts kept by Mr. Acklen, if any, and your own experience and knowledge, you can arrive at the probable expenses.

The $248,956 sales at Liverpool, as you will see from the Shroeder account, represent the net profit after deduction of the charges incurred in England. This was in gold; but unless the same was sold there is no premium to be returned. If sold the premium is returnable as income of the year of sale. Adding the sales of Liverpool ($248,965) and the sales of New Orleans ($501,236), the aggregate is found to be $750,200.

You will estimate the aggregate of the deductions allowed and subtract the same from the $750,200; one-half of the remainder will represent the taxable income of Mrs. Acklen, as derived from the sales which form the basis of assessment.

From a rough and, in the nature of the case, imperfect estimate made by the office, it is thought the tax due will be found to amount to from $22,000 to $25,000.

You will please report the conclusion to which you arrive to this office.

The office takes the occasion to acknowledge its appreciation of your fidelity, and confidently hopes, with the aid of Mr. Smiley (whose disposition to represent the interests of his clients fairly, and unaccompanied with any reflection whatever upon you or your associates, is thoroughly appreciated), you will soon reach a satisfactory conclusion.

Respectfully,

THOMAS HARLAND,
Deputy Commissioner.

To JOHN MCCLELLAND,
Assessor, Nashville, Tennessee.

On the trial of the case of Cheatham and wife against Norvell, in the circuit court of the United States at Nashville, the following agreement of counsel was read as evidence:

That on the 10th day of May, 1867, John McClelland, of the fifth collection district of the State of Tennessee, made an assessment against the plaintiff, Adelicia Cheatham, of $99,726, as income-tax for the year 1864, growing out of the sale of 2,887 bales of cotton; that the said Adelicia Cheatham, on the 17th day of June, 1867, by petition, appealed to the Commissioner of Internal Revenue of the United States against said assessment.

On the 7th of October, 1867, the Commissioner, through his deputy, instructed the assessor, John McClelland, to make a new assessment.

That on the 15th day of March, 1868, a new or final assessment was made against the said plaintiff, Adelicia Cheatham, for income for the year 1864, as follows:

Net income for the year 1864	$301,919.18
Amount in excess of $600 and not exceeding $5,000, subject to 5 per cent., $4,400	220.00
Amount in excess of $5,000, subject to 10 per cent., $297,519.18	29,751.91
Total tax and amount due	29,971.91

That on the day , 1868, the plaintiff, Adelicia Cheatham, paid said $29,971.91 under protest in writing, and that on the 15th day of January, 1869, the plaintiff instituted this suit to recover said amount paid under protest.

The plaintiff's counsel next read to the court and jury the receipts of the defendant, Norvell, showing the dates and amounts of the several payments of the said assessment, "No. 3," and made a part of this bill of exceptions.

Statement of the payment of Mrs. Acklen's income-tax, by her husband, Dr. William A. Cheatham:

April 30, 1868. By cash		$3,799.00
July 25, 1868. By cash		20,000.00
Oct. 29, 1868. By cash		8,275.00
		32,074.00
Amount of tax	$30,049.00	
Penalty on $26,250	1,312.50	
Interest on $26,250 to 1st July	529.00	
Interest on $6,250 to 1st October	187.50	
		32,074.00

H. L. NORVELL, *Collector.*

Judge Trigg, before whom the case was tried, gave the following written instructions to the jury:

First. That by the laws of the State of Louisiana the crops of cotton of 1861 and 1862 were the property of Joseph A. S. Acklen, the late husband of the plaintiff, Adelicia, at the time of his death, in 1863, and when she sold said crops of cotton in 1864, as administratrix of her said late husband, after paying the community debts of her husband and herself, and his individual debts, if he owed any such, one-half of the net balance of the proceeds of said cotton passed to said plaintiff, Adelicia, by the laws of the State of Louisiana, was not liable to pay any tax or duty in her hands under the act of Congress.

Second. That the crops of cotton raised in the years 1861 and 1862, respectively, were the annual products of those years, and could not be taxed as income for the year 1864 under the act of Congress of June 30, 1864.

Third. That it is the opinion of the court, and it so charges, that the assessment of said income against the plaintiff, Adelicia Cheatham, was erroneous and illegal, and made without the authority of law. Although the court is of the opinion that the assessment was illegal, yet it thinks, and so charges, that this case depends solely upon the construction of the nineteenth section of the act of 13th of July, 1866.

The court is of the opinion that the said nineteenth section is not a statute of limitations, as has been suggested, but it is a right given by Congress to all persons who feel that they have been illegally or erroneously assessed to sue to recover back money paid and exacted illegally, but only when they have complied the provisions of section of said act. It is a condition without doing which the parties have no action.

When a person shall deem himself illegally or erroneously assessed, before he can maintain suit in any court he must appeal to the Commissioner of Internal Revenue, according to the provisions of the law in that regard, and a decision of said Commissioner shall be had thereon, and suit must be brought within *six months* from the time of said decision, or within six months from the time this act takes effect. However, if said decision is delayed more than six months from the date of such appeal the said suit may be brought at any time within twelve months from the date of such appeal.

Now, if the jury shall believe from the evidence that the decision made by the Commissioner of Internal Revenue was made within six months from the 17th day of June, 1867, when this appeal was taken, then, under the 19th section of the act of 13th July, 1866, the plaintiffs must have brought their suit within six months from the date of that decision, and unless they do so they can not maintain this suit and the jury must find for the defendant.

Under section 3220 of the Rev. Statutes U. S. there is no doubt that the record of a proceeding against a tax-collector is as binding on the United States as if the Government was an actual party to the suit in the cases therein referred to, and so your committee have considered the record in this case.

In Judge Trigg's opinion the plaintiffs, Cheatham and wife, could not succeed, because they had not brought their suit within six months from the date of Deputy Commissioner Harlow's decision, which was October 7, 1867.

The suit was brought 15th January, 1869, which was within six months from the date of the last payment made to Norvell, tax-collector.

The Supreme Court of the United States, in affirming Judge Trigg's decision, do not dissent from his conclusion "that the crops of cotton raised in the years 1861 and 1862, respectively, were the annual products of those years, and could not be taxed as income for the year 1864 under the act of Congress of June 30, 1864." That court rests its decision on the sole ground that, to entitle the tax-payer to sue a tax-collector for collecting taxes upon an illegal assessment the tax-payer must first appeal from such assessment to the Commissioner of Internal Revenue.

The Supreme Court further held that as there was no appeal from the final assessment of taxes made on the 15th March, 1868, the right of the plaintiffs to obtain redress by suit had not been perfected by a compliance with the conditions of the statutes. It is obvious, then, the two courts selected entirely different grounds on which to rest their decisions.

Upon the statutes relating to this subject the matter was by no means free from doubt and embarrassment.

It is not a matter of common right to sue a government or its agents for taxes illegally collected. The United States accorded this right by statute upon certain conditions, and in such cases assumed to pay such recoveries as might be had against its tax-collectors.

Your committee are of the opinion that the appeal to the Commissioner of Internal Revenue authorized by statute may be made after the collection of the money by the tax-collector as well as after the assessment of the tax and before the money is paid. And in so far as mere lapse of time is concerned the appeal may be as lawfully taken within six months after the collection of the money as within that period after the final assessment.

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The Supreme Court held that to entitle the plaintiffs to sue the tax collector for collecting a tax so assessed, this appeal should have been made to the Commissioner of Internal Revenue, and that such appeal is essential to the right to sue.

This is the law, as correctly decided, but this law does not establish a right in the Government to take from a citizen his money, under color of collecting a tax, without any authority of law to justify the seizure. It is not even a statute of limitations, by which a wrong is sometimes sanctioned by lapse of time. If there was no law to support the assessment or the collection, when it was made, of this onerous burden, no officer of the United States could make it lawful by any act he could do or omit to do. Evidently the right of appeal to the Commissioner is not the only or even the preliminary right of the citizen to redress at the hands of the Government, when his property is taken without any color of law, and yet it may be the condition precedent on which the Government has permitted its tax collectors to be sued, so as to bind the Government by the judgments of the courts.

In case the tax is collected without any lawful authority, the tax-collector is bound personally, while the Government is in no way bound, except in honor, to refund the money after it has reached the Treasury. This property had already paid heavy taxation to the Government; and the internal-revenue taxes, amounting to $49,197.40, were of doubtful constutionality, to say the least of it. It had also paid an excise tax of $24,598.70, and hospital fees $14,116.80. It had borne every burden that the law had imposed upon it, and it was not until after the act of June 30, 1864, which imposed an income-tax, had been repealed that the first assessment of that tax was made upon the sales of cotton made in 1864.

It is true beyond question that this income-tax was not supported by the law, and its collection, against the earnest written protests of Mr. and Mrs. Cheatham, carried so much money into the Treasury by duress of governmental power, to which the Government had no right. It is the rightful property of Mrs. Cheatham.

It would not comport with the honor of the Government to retain this money upon the merely technical ground that it could not be recovered by suit.

The argument that laches is imputable to Mr. and Mrs. Cheatham is not sound. She mistook her rights and failed to secure redress for her grievance by the merest technicality. The Government was not in any way compromised by the delay of Mrs. Cheatham to bring suit, and should not by its example encourage or incite the people to regard it as a violation of its own laws when, by using its power to collect taxes contrary to law, it seizes the property of a citizen and refuses to restore it.

APPENDIX B.

TRANSCRIPT OF RECORD.—SUPREME COURT OF THE UNITED STATES.

WILLIAM A. CHEATHAM AND ADILICIA CHEATHAM, his wife, plaintiffs in error, *vs.* HENRY L. NORVELL, COLLECTOR OF INTERNAL revenue.	No. 160. Filed March 16, 1874.

In error to the circuit court of the United States for the middle district of Tennessee.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district middle Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea which is in the said circuit court before you between William A. Cheatham and wife, Adelicia Cheatham, plaintiffs, and Henry L. Norvell, collector, defendant, a manifest error hath happenned, to the great damage of the said William A. Cheatham, as by complainant appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein

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MIDDLE DISTRICT OF TE

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Present, the Hon. Con
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Present, also, Edward R
marshal of said district.

The following proceedin

On the 30th day of Janu
follows:

To the judges of the circuit

The petition of Henry L.
showeth as follows:

Petitioner, as such collect
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dence. Nevertheless, petitioner avers that said suit was brought solely to recover from him the amount of said tax so paid to him as such collector as aforesaid. Said writ was served upon petitioner within the district aforesaid. The premises considered, petitioner prays that a writ of certiorari issue to said circuit court of Davidson County, requiring said court to send to the circuit court of the United States the record and proceedings in said cause, and that thereupon said cause be docketed in said U. S. court, and thereafter proceeded in as a cause originally commenced in said court.

R. McP. SMITH,
U. S. Dist. Att'y.

Affiant makes oath that the matters set forth in the foregoing petition are true to the best of his knowledge information, and belief.

H. L. NORVELL.

Sworn to and subscribed to before me Jan. 27, 1869.

R. McP. SMITH,
U. S. Circuit Court Comm'r.

I hereby certify that I have, as counsel for the foregoing petitioner, examined the proceedings against him mentioned in the foregoing petition, and carefully inquired into all the matters set forth in said petition, and that I believe the same to be true.
January 27, 1869.

R. McP. SMITH,
U. S. Attorney.

On the 30 day of January, 1869, a certiorari was issued, which is as follows:

The President of the United States of America to the Hon. Eugene Cary, judge of the circuit court of Davidson County, in the State of Tennessee, greeting:

A petition, duly sworn and certified to, having been filed in the U. S. circuit court for the middle district of Tennessee, by Henry L. Norvell, collector of U. S. internal revenue, etc., stating that a suit is pending and undetermined in said State court, brought by Wm. A. Cheatham and wife against him as such collector, claiming from him $40,000 damages; which suit, it is further alleged, was so brought solely to recover from said collector the amount of income tax and penalty duly collected by him from said persons in accordance with the U. S. internal-revenue laws (being, however, paid under protest); the process issued on said suit being served upon said collector in this judicial district, said petition praying to have said suit removed into the said U. S. court, etc.:

Now, therefore, you are hereby required to cause to be sent to said U. S. court the record and proceedings in said cause, certified under your seal, to be therein proceeded in as if therein originally commenced. And you are also further required to stay all further proceedings in said cause in said State court.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Nashville, this the third Monday in October, 1868, and the 93d year of the Independence of the United States.

[SEAL OF THE U. S. CIR. CT.] E. R. CAMPBELL, *Clerk.*

Upon the back of said certiorari is indorsed the following return of the marshal:

Came to hand same day issued. Executed upon Eugene Cary, esq., judge of the circuit court of Davidson County, Tennessee, by making known to him the contents of the within certiorari, Feb'y 2, 1873.

E. R. GLASCOCK,
U. S. Marshal.

On the 10th day of Feb'y, 1869, a transcript of the record and proceedings had in the circuit court of Davidson County, Tennessee, was filed, which is as follows:

STATE OF TENNESSEE:

Pleas at the court-house, in the city of Nashville, county of Davidson, and State aforesaid, on the fourth Monday, being the 25th day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and in the 93rd year of American Independence. Present the Hon. Eugene Cary, one of the judges of the circuit courts of the State of Tennessee, and assigned to hold the circuit courts of the nineteenth judicial circuit of said State.

State of Tennessee to the sheriff of Davidson County, greeting:

You are hereby commanded to summon Henry L. Norvell, U. S. collector of income tax, if to be found in your county, to be and appear before the judge of the nineteenth

Witness my hand th

Issued 15th day of J
reading to Henry L. N

STATE OF TENNESSEE,
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Henry L. Norvell, U. S.
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Filed January 26, 1869.

Circuit cou

W. A. CHEATHAM AN
vs.
HENRY L. N

W. A. CHEATHAM ET AL.
vs.
HENRY L. NORVELL, U. S. TAX-COLLECTOR.

At the January term, 1869, of the circuit court, and on the 2d day of Feb'y, 1869, the following entry is made, to wit:

In this cause notice having been issued and served requiring this cause to be removed from this court to the U. S. circuit court for the middle district of Tennessee, there to be tried, it is ordered by the court that the clerk of this court make out and certify said cause to said U. S. circuit court for the middle district of Tennessee.

STATE OF TENNESSEE:

I, David C. Love, clerk of the circuit court for Davidson County, State aforesaid, do hereby certify that the foregoing is a correct transcript of the record and proceedings had in said court, wherein W. A. Cheatham et al. plaintiffs, and Henry L. Norvell, U. S. tax collector, defendant, as the same remains of record and on file in my office.

SEAL OF THE CIRCUIT COURT OF DAVIDSON CO., TENN. In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in Nashville, the 4th of Feb'y, in the year 1869, in the 93rd year of American Independence.

DAVID C. LOVE, *Clerk.*

On the 25th day of October, 1873, the following notice of defenses was filed by the defendant:

W. A. CHEATHAM AND WIFE
vs.
HENRY L. NORVELL, COLL'R.

To Hon. W. F. Cooper and John C. Gant, attorneys for W. A. Cheatham and wife.

You are hereby notified that the defendant, H. L. Norvell, in the case of W. A. Cheatham and wife *vs.* H. L. Norvell, pending in the circuit court of the United States for the middle district of Tennessee, will rely, under the general issue, upon the following defenses:

First. That the taxes were properly assessed.

Secondly. That no appeal was made to the Commissioner of Internal Revenue of the United States in manner and form as required by law.

Thirdly. That, if there was an appeal to the Commissioner, suit was not brought within six months from the date of the decision of the Commissioner, and within one year from the date of filing the appeal.

A. M. HUGHES,
Att'y for Def't.

On the 6th day of November, 1873, an entry was made on the minutes; which is as follows:

WILLIAM A. CHEATHAM AND HIS WIFE, ADELECIA Cheatham,
vs.
HENRY L. NORVELL, COLLECTOR.

Came the parties, by their attorneys, and came also a jury of good and lawful men, to wit: Wm. Anderson, E. A. Mathis, C. W. Smith, John C. Webb, John A. Hamlin, Wm. Morton, Joseph Whelep, A. B. Payne, J. B. Clements, C. L. Wilcox, Theo. Knoch, and D. M. Logan, who, being elected, tried, and sworn well and truly to try the issue joined, after hearing a portion of the evidence, were respited until to-morrow morning at 10 o'clock.

On the 7th day of November, 1873, an entry was made on the minutes; which is as follows:

WILLIAM A. CHEATHAM AND WIFE, ADELECIA Cheatham,
vs.
HENRY L. NORVELL, COLLECTOR.

Came again the parties, by their attorneys, and came again also the same jury empannelled in this cause on yesterday, who, after hearing the balance of the evidence and the argument of counsel, were respited until to-morrow morning at 10 o'clock.

WILLIAM A. CHE

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Question 3. Of what State was Col. Acklin, your former husband, a citizen at the time of his death; and for how long a time previous had he been such a citizen?

Answer. Joseph A. S. Acklin, my late husband, was a citizen of the parish of West Feliciana, in the State of Louisiana, at time of his death, which occurred on the 17 day of September, 1863. He died intestate in the State of Louisiana, leaving this deponent his widow, and leaving Joseph H. Acklin, William H. Acklin, Claude Acklin, and Pauline Acklin, his only children and heirs at law. Said Col. Acklin had resided in the State of Louisiana from some time in the year 1849 up to his death; but on the 6th day of April, 1852, he filed his petition in the 7th judicial district court of said State for the parish of West Feliciana, and by th judgment of said court he was domiciled and made a citizen of the State of Louisiana. And deponent states, in this connection, that while she was the widow of her first deceased husband, Isaac Franklin, deceased, and before her marriage with Col. Joseph A. S. Acklin, to wit, on the 22d day of May, 1847, she filed her petition in said court, and by the judgment thereof she was domiciled and made a citizen of said State of Louisiana. Certified copies of said petitions and proceedings in said court are hereto annexed, properly certified, as she believes, marked Exhibits A and B, and make a part of this deposition; and I and my said husband, Col. Acklin, continued to reside and be citizens of the State of Louisiana up to the time of his death, as aforesaid. We had a summer residence near the city of Nashville, Tennessee, where we stayed usually during the warm sickly season of the year, to avoid the diseases incident to the climate in the State of Louisiana.

Question 4. This suit was brought to recover money paid by you and Dr. Cheatham under protest, to the defendant, as collector of the United States internal revenue for the district of this State, Tennessee, including Davidson County. Is this so?

Answer. This suit is brought to recover the money paid by me and my husband, Dr. Cheatham, under protest, to the defendant, as collector of internal revenue for the 5th district of Tennessee, including Davidson County. It was paid in the year 1868.

Question 5. State whether the tax thus paid was the tax upon your income, and for what year.

Answer. The tax paid to the defendant was the sum of *thirty*-nine thousand nine hundred and seventy-one $\frac{91}{100}$ dollars (29,971.91), and was assessed and collected from me, under protest, as tax upon my income for the year 1864.

Question 6. From what source was the income derived upon which the tax thus paid was assessed? Was it from any and what crops raised in this State or some other, and what other State?

Answer. It was taxed on my income for the year 1864, upon my share of the proceeds of the crops of cotton raised in the year 1861 and 1862, upon certain plantations in the parish of West Feliciana, in the State of Louisiana, in which deponent had an undivided interest in said plantations; and the other undivided interest belongs to her [my] four children, or perhaps in reality to only two of her [my] children, when said cotton was raised. The plantations were carried on, however, under the management and control of her late husband, Col. Joseph A. S. Acklin. Said two crops of cotton were held over by reason of the late war, and remained upon the said plantations unsold at the death of Col. Acklin. After his death, and after being appointed tutrix of said children and heirs of Col. Acklin, and after getting the proper permits from the United States authorities, I undertook, in the latter part of 1863, to get said crops of cotton out from said plantations and to market, and after great expense, trouble, and delay, I and my agents succeeded in getting said cotton removed to the city of New Orleans, Louisiana, in the early part of the year 1864, where I sold more than half the cotton and shipped the remainder to England, where it was sold.

Question 7. Were these crops raised in the year 1864; and, if not, in what year or years were they raised, by whom, and under what circumstances?

Answer. I have stated that said cotton was raised on said plantation by Col. Acklin in the years 1861 & 1862; the crop of 1861 was ginned and baled on the plantations by Col. Acklin, but the crop of 1862 was in the seed; on account of the war Col. Acklin was not able to have it ginned and baled. I caused it to be ginned and baled after its removal to the city of New Orleans, La.

Question 8. Please state the circumstances under which you succeeded in carrying these crops to market, and when, and the expenses which you had to pay in accomplishing this object.

Question 9. State the circumstances under which the assessment was made, and when, and what action did you take when the original assessment was made; did you file a petition for a revision of the assessment; were the statements in that petition correct? Repeat these statements, or make a copy of the petition a part of your deposition.

Answer. In answer to the 8th and 9th interrogatories, I will try to answer both together, and I think that I can present the whole case better by first stating that about the 15th May, 1867, I was notified by the defendant, Norvell, as collector of internal revenue of the 5th district of Tennessee, that a tax had been assessed against

me on income for the year 1864, amounting to ninety-nine thousand seven hundred and twenty-six dollars ($99,726.00), and payment thereof was demanded. Not being able to get a reassessment made, or said assessment set aside, diminished, or abated by the defendant in any manner, she and husband appealed to the Department at Washington City for relief. She forwarded her petition to the Department at Washington after she and husband had given a bond and security as required by defendant. Said petition was sworn to on the day of , 1867, and forwarded to the Department at Washington, a true copy of which is hereto annexed, except the signatures of herself and husband, Dr. Cheatham, are not to said copy, nor is the affidavit to said petition forwarded to said copy retained; but with these exceptions the copy hereto annexed, marked "Exhibit C," is a true copy, and is made a part of this deposition. In said copy, marked "Exhibit C," the facts are substantially stated in it and Schedule No. 1 to said copy, and gives a full answer to said interrogatories 8 and 9, as deponent can now give to said interrogatories. Said petition and schedule sets out the number of bales of cotton raised in 1861 and 1862, for how much the cotton was sold, the amount of the mortgage-debt upon it paid by deponent, the expenses of getting said cotton to market, bagging, rope, baling, &c. It will be seen from said copy of said petition and schedule, Exhibit No. 1 thereto, that the net proceeds of said cotton is put down at $758,674.41; that the expenses of getting said cotton to market was $113,995.34; to this must be added dues to U. S. Government paid:

Internal revenue	$49,197.40
Excise tax	24,598.70
Hospital fees	14,116.80
Making	$201,908.24

But in making out said schedule of expenses various items of expenses were omitted, to wit, $5,000.00 paid Mrs. S. A. Carter, whose services were of great value in getting said cotton out and to market, and her board and traveling expenses were also paid. There were other expenses paid out of the proceeds of said cotton. She also paid other debts of her late husband, Colonel Acklin, out of the proceeds of said cotton, amounting in the aggregate to about $16,000.00, which had been paid through her agents, and were omitted to be stated in said petition or put down in said schedule. The balance of the items in said schedule are estimates of probable expenses incident to the carrying on said plantations, and feeding, clothing, medical bills, &c., for the negro slaves, and for the sustenance of the live stock on said plantations for the years 1861, 1862, 1863 & 1864. As to the latter, she has no means of stating the actual and precise amounts, but she believes they approximate the correct amounts; but in all other respects the facts set forth in said petition and schedule, or appeal to the Department at Washington, she believes to be substantially correct. Deponent believes she was entitled to one-half the net proceeds of said cotton after all of the community debts of herself and Colonel Acklin were paid, and her said four children to the other half, to be equally divided between them; and that by law she was not bound to pay any tax or duty upon her half, and so in substance stated to the Department in said petition, and so asked them to decide; but if the law was otherwise, she insisted that said assessment was too high and unjust, and she prayed that assessment be set aside and her case investigated and a new assessment made by the local assessor at Nashville, upon a proper basis, making the deductions prayed for. The Department at Washington decided in substance that deponent was bound to pay income tax for the year 1864 upon her share of the proceeds of said cotton; but that said assessment of $99,726.00 was erroneous, and ordered to be set aside, and directed the local assessor at Nashville to make a new assessment at Nashville, &c.

Question 10. State whether the final assessment made, and which was paid by you under protest as aforesaid, was not as follows:

Income tax on $4,400.00 at 5%	$220
" " 297,519.18 at 1	29,751.91
	29,971.91

Answer. The local assessor at Nashville, Tennessee, did make a new and final assessment against deponent on the day of , 1868, as tax upon deponent's share of said cotton for the year 1864, as follows:

Income tax on $4,400.00 at 5%	$220.00
" " 29,519.18 at 10%	29,751.91
	$29,971.91

Question 11. Was the payment of this assessment made under protest? If so, make the protest a part of your deposition.

Ans. 11. The payment of this assessment was made under protest, on or about the 23rd of July, 1868, a true copy of which is hereto annexed, marked "Exhibit D," and made a part of this deposition.

Ques. 12. You have stated that the crops on which the assessment was made were raised in the parish of West Feliciana, State of Louisiana, in the years 1861 and 1862. What number of bales of cotton produced the income thus assessed, and of this number how many bales were of the crop of 1861 and how many of the crop of 1862?

Ans. 12. The crops of cotton 1861 and 1862 produced twenty-eight hundred and eighty-seven bales (2,887), and I believe over two thousand bales were of the crop of 1861, and the residue were of the crop of 1862.

Ques. 13. To whom did these crops or proceeds belong, under the laws of Louisiana?

Ans. 13. I have alway' been informed, and believed, that said crops of cotton belonged to the late Colonel Acklin, and the proceeds belonged to his estate after his death, by the laws of the State of Louisiana, and that by the laws of said State, after the payment of the debts of Colonel Acklin and the community debts, one-half the net proceeds belonged to me as his wife and widow, and the other half of said net balance belongs to his said four children and heirs, to be equally divided between them. This is, however, a legal question, to be detérme'd by the laws of the State of Louisiana, and I may be in error.

Ques. 14. These crops were raised by the labor of slaves, and the use of horses, mules, oxen, cattle, &c.; what was the cost of the subsistance and clothing of these slaves, and of the subsistance of the horses, mules, oxen, cattle, &c., for the years of 1861 and 1862, and how and by whom was this cost paid?

Ans. 14. Said crops of cotton were raised by the labor of slaves, and the use of horses, mules, oxen, cattle, &c., farming-tools, implements, &c., but I am unable to state the cost of the subsistance and clothing of these slaves, their medical bills, &c., and of the subsistance of the horses, mules, oxen, and other cattle, and the salcries of overseers, &c., for said years of 1861 and 1862; but I think my petition to the Department and schedule Exhibit No. 1 thereto, above referred to and made a part of this deposition, marked "C," states the facts as fully as I can, and I believe they approximate to the truth, and, therefore, without repeating the various items in detail, I refer to said petition and schedule marked "Exhibit C" as my answer to this question. The costs incident to the raising of the said crops of 1861 and 1862 were very great, and especially in the year 1862; the cost of supplies had run up to fabulous prices, and had to be purchased on time, or with money advanced by our commission merchants, or with borrowed money, all of which was paid by me, after the death of Colonel Acklin, out of the proceeds of said cotton.

Question 15. Was there any privilege, lien, or mortgage given by you or your husband upon the crops of these years, for the debt incurred or money raised to meet the outlay for those farms in the subsistance and clothing of the slaves and subsistance of the live stock as aforesaid? If so, please explain the nature and character of the same, the amount secured, and by whom, when, and how the debt was finally paid.

Ans. 15. There was a mortgage given in the name of Colonel Acklin and myself upon the Louisiana plantation and a part of the slaves, and a privilege lien upon the crops, to secure a very large debt and further advances, to Bradley Wilson & Co., of the city of New Orleans, Louisiana, and afterwards Col. Acklin gave a privilege lien upon the crops for between thirty and forty thousand dollars more, all of which I paid out of the proceeds of said cotton, on the 20th of May, 1864, to Bradley Wilson & Co., amounting to $278,594.86, including interest.

After I succeeded in getting said cotton to the city of New Orleans and ready for market, the said Bradley Wilson & Co. notified me of their lien upon said cotton (which was for a larger sum than I supposed), and that I could not remove said cotton until their said debts and interest were paid, but that I might sell on condition their said debts were paid out of the proceeds. I therefore sold cotton and paid the debts and interest. I do not remember of giving my assent to said mortgage, or having given a power of attorney to any one authorizing the use of my name in the execution of said mortgage, though I may have given a power of attorney authorizing the use of my name, or authorizing the execution of the mortgage. I know that I and my children were at our residence near Nashville, and that Col. Acklin came to Tennessee, bringing with him notes bearing date in the city of New Orleans, La., for me to sign, amounting in the aggregate to a very large amount, stating, in substance, that Bradley Wilson & Co. refused to make any further advances for supplies for said plantation unless said notes were signed, to cover the debt and interest then said to be due to Bradley Wilson & Co. which had been running for some time, and to cover the advances supposed necessary to make a crop that year, and that the crop could not be made that year without said advances. This was the first year of the war, in the spring of 1861. But she was informed that, the exigencies of the war, and the navigation of the Upper Mississippi being cut off, the supplies before the end of the year ran up up to fabulous prices when they could be bought at any price, and therefore Col. Acklin was compelled to give

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Confederate cavalry

deponent, and the other half to Col. Acklin's children; and your deponent was and is informed and believes that said portion passing to her on the death of Col. Acklin was not subject to any tax or duty; but this is a legal question, and she may be in error.

ADELECIA CHEATHAM.

Sworn to and subscribed before me Nov. 15, 1872.

E. R. CAMPBELL, *Clerk.*

Exhibit A to deposition of Adelecia Cheatham.

To the honorable the judge of the seventh judicial district court of the State of Louisiana, holding sessions in and for the parish of West Filiciana:

The petition of Joseph A. S. Acklen, at present residing in said parish, respectfully represents, that he is a citizen of the State of Alabama, but for the last three years a citizen and resident of Louisiana, except for a few months during the summer; now, under the provisions of the laws of this State, claims to have his citizenship made a matter of public record. Therefore he prays your honor that this his declaration of domicil be received and made a part of public record according to law, and that your petitioner have all other relief that the nature of his case demands.

JOSEPH A. S. ACKLEN.

Having considered the foregoing petition, it is ordered that the same be received and filed according to law.

April 6, 1862.

CHARLES B. COLLINS, *Clerk.*

Filed April 6, 1862.

CHARLES B. COLLINS, *Clerk.*

STATE OF LOUISIANA,
Parish of West Feliciana:

SEVENTH JUDICIAL DISTRICT COURT, CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original now of record and on file in my office.

Given under my official signature and seal this 29 day of March, A. D. 1853.

[SEAL.] CHARLES B. COLLINS,
Clerk of said Court.

UNITED STATES OF AMERICA,
State of Louisiana:

By Paul O. Hebert, governor of the State of Louisiana.

These are to certify that Charles B. Collins, whose name is subscribed to the instrument of writing herein annexed, is, and was at the time of subscribing his name to said instrument, clerk of the district court for the seventh judicial district of the State of Louisiana in and for the parish of West Feliciana, and that his attestation to the same is made in due form of law and by the proper officer.

Given at Baton Rouge, under my hand and seal of the State, this 5th of April, A. D. 1853, and of the Independence of the United States the 77th.

[SEAL OF THE STATE OF LA.] P. O. HEBERT.

By the governor:

ANDREW S. HERRON,
Secretary of State.

Exhibit B to deposition of Adelecia Cheatham.

Declaration of domicil by Mrs. Adelecia Franklin.

To the honorable the judge of the district court for the seventh judicial district, parish of West Feliciana, State of Louisiana, having the power of and authority of the late judge of said parish of West Feliciana in matters of domicil.

The petition of Adelecia Hays, the widow and relict of Isaac Franklin, deceased, respectfully shows that your petitioner, by the death of her two daughters, Victoria and Adelecia Franklin, has inherited a considerable estate in lands, slaves, and movable property, situated in the said parish of West Feliciana, and remaining in kind, undivided, with the property of the succession of her late husband, Isaac Franklin, to be administered by the executors of the last will and testament of her said husband,

[illegible] 22, 1847.
Truly recorded, M

STATE OF LOUISIAN
Parish of West

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UNITED STATES OF A
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By Paul

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By the governor:

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To the hon'l :

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New Orleans at eight per cent. per annum interest, secured by a privilege or mortgage on the plantations, slaves, and growing crops, which funds were absolutely necessary for keeping up the plantations, and were so applied.

Your petitioner now has before her a letter from Bradley, Wilson & Co., of New Orleans, her commission merchants, written in the fall of 1861, which shows that the liabilities they had thus incurred for your petitioner and her husband, by advances in 1861 and acceptances maturing in that year, and in 1862, up to July, amounted to $231,373.91. And this debt, with 8 per cent. interest, was subsequently, in 1864, paid to them or their assignees out of the proceeds of the sale of the crop of 1861, the whole sum thus paid being $278,594.86.

Your petitioner would further state that the increased difficulties of obtaining supplies, the absolute necessity of raising provisions, and the impossibility of regulating and controlling the labor of the slaves largely diminished both the planting and yield of cotton in the year 1862. Your petitioner is fully satisfied that the yield of the cotton crop of 1862 was not the one-third of the year 1861, and the expenses of carrying on the plantation were greater. Your petitioner's husband was compelled to make, and did make, great sacrifices to enable him to go through the season. The cotton crop of 1861 had been ginned and baled, but the crop of 1862, on account of the running off the stock, and the impossibility of procuring bagging and rope, remained in the seed until, in the summer of 1864, sacks were procured and brought up from New Orleans, and the cotton, at great expense and hazard, taken to New Orleans and there ginned and baled. Your petitioner is thus particular in stating these facts in order that it may be clearly seen that her agent, in the estimate hereinafter mentioned of the net proceeds of the crop of 1862, was fully justified by the facts, and that he erred, in reality, in making the amount larger than it should have been.

Your petitioner supposed that the crops having been the produce of plantations in Louisiana, where she and her husband were at the time domiciled, and in which her husband, herself, and her children had an undivided interest, that she was not expected to make return thereof under the internal-revenue laws of the United States, unless required to do so by the local assessors of that State, where the facts were known and could easily be established. She was also advised that no effort was being made to collect the income tax for the years 1862, '3, and '4 in the State of Louisiana, and that it was neither right nor just to make *to make* an exception of her case to the general rule. Accordingly she did not make any return of the proceeds of the crop of 1862 in her return of income in Tennessee. Recently, however, a special agent of the Treasury Department at Washington applied to petitioner's agent for a return of the sales of said crop. Said agent of the Treasury Department stated that the act of Congress of , 1862, did not, nor did any of the subsequent acts in relation to the tax on incomes, reach back to the crop of 1861, and that what your petitioner was required to do was to return her income in the crop of 1862.

Your petitioner was advised by counsel that the act of Congress of , 1864, under which she was required to make the return, does not cover or include the proceeds of crops made previous to the year 1864, and that this point had been expressly decided by the courts of the United States; among others by the circuit court of the United States at Baltimore, in the case of Odler Bove. But said Treasury agent threatening, notwithstanding his attention was called to the legal construction of the law, that he would himself cause a return, with the penalties prescribed, to be made, unless your petitioner would furnish a return herself, your petitioner's agent applied to him to know whether it would be necessary to make out all the items specifically or only to make a lumping statement. Upon his assurance that the latter would be sufficient, your petitioner's agent, by taking one-half of the net sales at New Orleans and Liverpool, as they appeared on the accounts before him, added 25 per cent. for the difference between gold and currency to the sales in Liverpool, and by deducting one-half of such allowance as he thought your petitioner would be entitled to, ascertained that the full amount with which your petitioner could be chargeable in any event for the crop of 1862 was $103,195, and made return accordingly, accompanied, however, with a protest in your petitioner's name against any assessment of income tax upon said crop. The Treasury agent accepted the return, and promised, as your petitioner's agent understood him, to lay the return and protest before the Commissioner at Washington.

Your petitioner was, therefore, taken by surprise when served, on or about the 15th of May inst., with a notice in writing by H. L. Norvell, collector of the 5th dist., Tennessee, that a tax had been assessed upon her amounting to ninety-nine thousand seven hundred and twenty-six dollars ($99,726), on her income for the year 1864, and that payment thereof was demanded. Your petitioner does not know how this result has been arrived at, but she knows that the amount is excessive, and she solemnly protests against the same, not only for the reasons suggested in her protest above referred to, but because the same is erroneous and unjust. Your petitioner has, as rapidly as possible, obtained the necessary papers from New Orleans and elsewhere, and is now able to make a correct statement of the exact amount realized from the sales of said

crops, and an approximation of the deductings to which, as she is advised, she is entitled to under the internal-revenue laws.

Your petitioner would now state that the crops of cotton of 1861 and 1862 were with great difficulty and at great expense preserved from destruction until the spring of 1864, when they were sent together, the crop of 1861 ginned and baled and the crop of 1862 unginned and in sacks, to New Orleans, where the latter crop was ginned and baled. The entire crops amounted to twenty-eight hundred and eighty-seven bales (2,887), of which, as she is informed and believes, over two thousand were of the crop of 1861, and the residue of the crop of 1862. Of these, seventeen hundred and eighty-five bales (1,785) were sold at New Orleans, and eleven hundred and two bales were sent by way of New York to Liverpool, the cost of shipment being paid out of the proceeds of sales at New Orleans. After paying the necessary expenses of getting the crops to market, and the expenses of the sale at New Orleans, and the Government dues, including—

Internal-revenue tax	$19,197.40
Excise tax	24,598.70
Hospital fees	14,116.80
	87,912.90

the net balance of the sales at New Orleans, as shown by the account sales and accounts current of the commission merchants (all of which can be produced if required) amounting to the sum of three hundred and twenty thousand seven hundred and thirteen $\frac{51}{100}$ dollars. In the same way, the net sales of the cotton made at Liverpool tween July and Dec'r, 1864, as shown by the accounts currents of Schroder & Co. (which can be produced if required), were fifty-one thousand four hundred and thirty-nine pounds two shillings and six pence (£51,429 2 6), which, when reduced to Federal denominations, at four $\frac{84}{100}$ dolls. to the pound sterling, amounts to two hundred and forty-eight thousand nine hundred and sixty-five dollars and thirty-six cents ($248,965.36). The proceeds of these sales were placed to her credit at the Rothschild in Sept. and Dec'r, 1864, and Jan'y, 1865. The net sales at New Orleans and Liverpool are $569,679.07.

Your petitioner is advised that, upon the supposition that these net proceeds are liable to an income-tax, she is entitled to have deducted therefrom the necessary expenses of raising the crops, the average repairs on the plantations for the years 1861 and 1862, the annual taxes for those years actually paid, the interest upon the mortgage debt on the plantations and crops, and the actual expenses of preserving the cotton from destruction.

She is also advised that if the proceeds of either of these crops are to be charged as income for 1864 she is entitled to a further deduction for the interest of the mortgage debt to the day of payment, and for the subsistence of the slaves and stock to 1864, inclusive. All these credits she has set forth in the schedule of exhibit herewith filed, marked "No. 1," and made a part of this petition. The items are estimated from the best information she has been able to procure, and are, she believes, a near approximation to the truth, and under rather than over the reality. They amount, it will be noticed, to three hundred and seventy-nine thousand eight hundred dollars. If now we deduct this amount from the next proceed of sales as above, we have a balance of one hundred and eighty-nine thousand eight hundred and seventy-nine $\frac{71}{100}$ dollars. Of this balance, for the reasons already given, two-thirds may be considered as the net proceeds of the crop of 1861 and one-third as the net proceeds of the crop of 1862; thus:

Two-thirds for 1861	$126,586.05
One-third for 1862	63,293.02

Your petitioner believes the foregoing is a near approximation to the truth, and if she is chargeable with anything it is only with the income-tax on her undivided interest in the net proceeds of the crop of 1862, and then only under the provisions of the act of Congress of 1862, not the act of 1864, which can not relate back to crops raised before that year. The crop of 1871, it is obvious, is not subject to income-tax at all, and the net proceeds of its sales were used in the payment of the debt which was a mortgage thereon. Your petitioner submits that she ought not to be charged at all, except through the local assessors of the State of Louisiana, and then only in case all other citizens in like situation with her husband and herself in that State are so charged, with income-tax on the crops of these years. She respectfully asks that the assessment made by the local assessor of the 5th collection dist. of Tenn. be reviewed, set aside and annulled; that her protest against any assessment be considered and acted on, and that justice be done in the premises. It is proper to add that one of the deductions made by her is the amount of $50,000 claimed by Alex. Walker for services in getting the crops to market, and for the recovery of which he has brought suit in the courts of Louisiana, and recovered judgment for $25,000, which judgment

was, upon the appeal to the Supreme Court, reversed and remanded for another trial. If this claim should be disallowed in whole or in part, and your petitioner is held bound to pay an income-tax on the crops in question, she will hereafter, in future returns of income, hold herself bound to return so much of the $50,000 as may be avoided in said suit, less the actual expenses incurred in defending the same. This is the only deduction made from the gross sales at New Orleans, as per account sales and account currents, which is not for money actually paid by her said commission merchants at New Orleans for the necessary expenses of getting the crop to market and selling the same. The deductions in Schedule A, No. 1, are in addition, and such as she is advised she is entitled to under the internal-revenue laws. Your petitioner has exhausted the proceeds of the crop of 1861 in the payment of the mortgage debts as before stated, and if now called upon to pay an income-tax on the proceeds of that crop would be compelled to sell property to meet the demand. Your petitioner again submits the matter to your decision, being willing, as she always has been, to pay an' dues with which she is legally and properly chargeable.

Exhibit Schedule No. 1 to foregoing petition.

1864.				
April	26.	To net sales 1,118 bales cotton at N. O.		$299,758.56
June	8.	" " " 642 " " " " " "		190,565.58
"	27.	" " " 25 " " " " " "		12,359.16
"	8.	" sacks returned $5,583.25; overcharge on insurance, $1,442.50		7,025.75
July to Dec'r.		" net sales 1,102 b. c. at Liverpool, £51,439 2 6, at 4.84		248,965.36
				758,674.41
1864.				
April and May.		By bagging, rope, sacks and freights thereon	$7,769.05	
" to June.		" wagons, teams, and freights thereon	8,843.46	
" " "		" river freights on cotton	2,615.00	
" " "		" permits to shipp bagging, etc	550.00	
" " "		" *by* am't paid Dufield for bringing out cotton	10,597.94	
" " "		" am't paid Alex. Walker " " "	500.00	
June	6.	" " " W. H. Hunt, prof. services	5,000.00	
" 21 to 30.		charges on 500 b. c. shipped to Liverpool	32,150.00	
		" " 602 " " "	43,969.23	
		By subsistence, clothing, medical attendance, and supplies for 1,500 negroes; subsistence for 700 mules, horses and cattle, and other expenses, 1860 and 1862	200,000.00	
		By " " " " 1863 and 1864	100,000.00	
		" 6 overseers for 1861 and 1862	12,000.00	
		" average repairs " " "	7,000.00	
		" taxes " " "	4,800.00	
		" interest on mortgage-debt for 1860 and 1822, on farm and crops, at 8 per cent	32,000.00	
		" do. do. do. do. 1863 and 1864	24,000.00	
		" actual expenses in saving cotton, '62 to '64	25,000.00	
		" am't claimed by Alex. Walker and in suit	50,000.00	
				$541,795.34
				$216,879.07
		Net am't sales in New Orleans	$507,709.05	
		Less actual expenses	111,995.34	
				$397,713.71
		Net sales in England		248,965.36
				$646,679.07
		Br't forward		$646,679.07
		Expenses of producing, saving, and taking to market		429,800.00
				$216,870.00
		Of this ½ is a fair estimate for crop 1861	$144,586.05	
		And ½ " " " " 1862	72,292.02	
				$216,899.07

Exhibit D to deposition of Adelecia Cheatham.

William A. Cheatham and Adelecia, his wife, lately Adelecia Acklen, protest against the assessment of the income tax made out against the said Adelecia by the local assessor of the 5th collection district of Tennessee, at Nashville, for the year 1864, and

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Letter of Thomas Harland, marked "No. 2."

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, October 7, 1867.

SIR: I have before me your letter of 9th ult., relative to the assessment made upon the income of Mrs. Adelecia Acklen, of Nashville, for the year 1864; also letter of 13th of May last of D. S. Goodloe, esq., rev. agent, enclosing abstract of the assessment, and a petition from Mrs. Acklen, addressed to this office; also, a letter dated Aug't 24th last, from Collector Norvell, introducing to the office Mr. Thomas T. Smiley, of your city; also, a copy of the account-current of 1864, between W. A. Johnson & Co., of New Orleans, commission merchants, and Mrs. Acklen; also, the account-current between Mrs. Acklen and J. H. Schroder & Co., of Liverpool, for the same year, and various other papers.

It appears that, being unable for some reason to obtain a statement from Mrs. Acklen of her income of 1864, an independent assessment was made by you, based upon the sales of 3,000 bales of cotton in 1864, for $800,000 net and tax assessed, which, with penalty, amounted to $99,650. The reasons which prevented due returns by Mrs. Acklen for the year 1864, are stated by Mrs. A. in her petition, many of which, if not all, are deserving of consideration, but whether valid or not, there is no doubt but that, under the circumstances, you were justified in making an independent assessment, while at the same time, in view of the statements of the petition, and the accounts of Mrs. Acklen with her agents in New Orleans and Liverpool, it is clear that the assessment made is so far in excess of the proper assessment that great injustice should be done were it allowed to stand.

On examination of the accounts-current referred to you, you will see that in all 2,887 bales of cotton, the product of various plantations in the State of Louisiana in the years 1861 and 1862, were sold in 1864; of which 1,785 bales were sold in New Orleans for $501,235.00, and 1,102 bales in Liverpool for £51,439.29; reduced to Federal denominations, at $4.84 per pound sterling, $248,965. Mrs. Acklen appears to have gotten the impression that at least so much of the proceeds of the aforesaid crops as was raised from the product of the year 1861 is not returnable as income; but the law now in force and also at the time of assessment of income for 1864, places the tax on all sales of farm and plantation products made in that year, making no distinction as to the time when the same were raised. Such expense of carrying on the farm or plantations as is due to the year of income (in this case in 1864) is also deductible from the sales, but expenses due to the former years can not be taken into consideration.

In the abstract of the independent assessment which you forward you have allowed "$400,000 expenses of taxing and raising;" but there is no authority for such allowance, at all events in making a regular assessment.

In view of the above-mentioned requirements of the law, and the unprecedented expense incurred in raising the crops sold in 1864, it is believed to be no more than just that Mrs. Acklen should enjoy the extreme benefit of all such other deductions as can be legally and reasonably made. The office will, therefore, consider the facts of the case in detail. The first consideration to which the petitioner calls attention is "that before and during the years 1861 and 1862, and afterwards, up to the 11th day of September, 1863, her late husband, Joseph A. S. Acklen, and your petitioner as his wife, were resident citizens of the State of Louisiana, in the parish of West Feliciana.

"At this latter date the said Joseph A. S. Acklen departed this life, and your petitioner subsequently made her home in Tennessee. Your petitioner was and still is the owner of an undivided interest in several valuable plantations in said State of Louisiana, the other undivided interest belonging to her four children by said Acklen, for whom she is tutrix under appointment in that State. The plantations were carried on, however, under the management and control of her late husband, and he was entitled to an undivided half of the income, acquits and gains."

From the above statement, and the terms of the Louisiana code, it appears that an undivided half of the cotton product, the sale of which in 1864 forms the basis of said assessment, passed in September, 1863, as personal property, from Joseph A. S. Acklen to his children, constituting legacy only, and not taxable as income.

If any profit were realized by the sale of said cotton over and above the value, when the same passed to the children of Mr. and Mrs. Acklen, which is doubtful, that profit would be returnable as income of the beneficiaries. As tutrix of her children, it appears Mrs. Acklen undertook the transportation and sale of all the cotton referred to, including her own. Under these circumstances, it is of course unnecessary to follow the disposition of that portion of the cotton belonging of right the children, but, for convenience' sake, the entire sales and expenses will be first considered.

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Respectfully,

THOMAS HARLAND,
Deputy Commissioner.

To JOHN MCCLELLAND,
Assessor, Nashville, Tennessee.

The following facts were agreed to and admitted to be true by the counsel for both parties:

That on the 10th day of May, 1867, John McClelland, of the fifth collection district of the State of Tennessee, made an assessment against the plaintiff, Adelecia Cheatham, of $ income tax for the year 1864, growing out of the sale of 2,887 bales of cotton sold by the said Adelecia Cheatham, on the 17th day of June, 1867, by petition appealed to the Commissioner of Internal Revenue of the United States against said assessment. On the 7 Oct., 1867, the Commissioner, through his deputy, instructed the assessor, John McClelland, to make a new assessment. That on the 15th day of March, 1868, a new or final assessment was made against the said plaintiff, Adelecia Cheatham, for income for the year 1864, as follows:

Net income for the year 1864	$301,919.18
Amount in excess of $600 and not exceeding $5,000, subject to 5 per cent., $4,400.00	220.00
" " " " $5,000, subject to 10 per cent., $297,519.18	29,751.91
Total tax and amount due	29,971.91

That on the day of , 1868, the plaintiff, Adelecia Cheatham, paid said $29,971.91, under protest in writing, and that on the 18th day of January, 1869, the plaintiff instituted this suit to recover said amount paid under protest.

The plaintiffs' counsel next read to the court and jury the receipts of the defendant, Norvell, showing the dates and amounts of the several payments of the said assessment, marked No. 3, and made a part of this bill of exceptions.

Statement of the payment of Mrs. Acklen's income tax by her husband, Dr. W. A. Cheatham.

April 30, 1868, by cash		$3,799.00
July 25, " " "		20,000.00
Oct. 29, " " "		8,275.00
		32,074.00
Am't of tax	$30,049.00	
Penalty on $26,250	1,312.50	
Interest on $26,250 to 1 July	525.00	
" " $6,250 to 1 Oct	187.50	
		32,074.00

H. L. NORVELL, *Coll'r.*

The plaintiffs, by their counsel, submitted the five following propositions in writing to the court and requested the court to charge them to the jury as the law; which paper is marked No. 4, and made a part of this bill of exceptions.

Paper marked No. 4.

First. That in order to have the benefit of any statutes of limitations, the defendant must plead the same, and there being no plea of the statute in this case the defendant can set up no such defense.

Second. That the 19th section of the act of July 13, 1866, ch. 184, only imposes upon a tax-payer, as a condition preliminary to bringing a suit for the recovery of taxes illegally assessed, and paid by him under protest, an appeal to the proper officer, and a decision thereon; that this appeal may be taken from the assessment, and, if so taken, and the new or reassessment is made in a strict conformity with the rulings on the appeal, then no second appeal is necessary to entitle the tax-payer, upon payment of the illegal assessment under protest, to sue for and recover the same.

Third. That in such cases the 19 section of the act of July 13, 1866, ch. 184, does not affix any limit of time within which the suit shall be brought as a condition to the right of action or as a statute of limitations.

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UNITED STATES OF AME
Middle District

I, Edward R. Campbell,
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transcript of the record a
A. Cheatham and his wife

APPENDIX C.

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, January 30, 1879.

SIR: In reply to yours of the 23d instant, in which you ask certain information relative to taxes levied and collected in the year 1864 on cotton raised in the years 1861 and 1862, and owned and sold by Mrs. Adelicia Cheatham, I have to say that section 94 of the act of June 30, 1864, imposed a tax of 2 cents a pound on all cotton upon which no duty had been levied, collected, or paid, and which was not exempted by law; and section 99 of the same act imposed a tax of one-eighth of 1 per cent. upon the sales of merchandise, produce, etc., made by brokers.

The hospital-fee referred to was not levied and collected by authority from this office. I believe that it was collected by military authority.

The records of this office do not show that any tax on cotton was assessed against or collected of Mrs. Acklin (or Cheatham) where her residence is understood to have been—the fifth district of Tennessee. Her sales of cotton are understood to have been made through brokers; and, if so, the tax thereon was probably assessed against the brokers who made the sales. If it was so assessed, it is impossible for me, from the records of this office, or any other information now in my possession, to say what amount of tax was assessed or collected on cotton owned by her.

In March, 1868, an assessment, amounting to $29,971.91, was made against Mrs. Acklin on her income for the year 1864. This amount, together with penalty and interest, amounting to $2,101.59, was paid in April, July, and October, 1868. It is understood that the income upon which this assessment was made was derived chiefly from the sale of cotton. The assessment was made under the provisions of sections 116 and 117 of the act of June 30, 1864, as amended by the act of March 3, 1865. (Section 13, Statutes, pages 479 and 480.)

Respectfully,

GREEN B. RAUM,
Commissioner.

Hon. J. H. ACKLEN, M. C.,
House of Representatives, Washington, D. C.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 234.

ADDITIONAL ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE TERRITORY OF IDAHO.

February 17, 1890.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. Morey, from the Committee on the Territories, submitted the following

REPORT:

[To accompany bill H. R. 967.]

The Committee on the Territories, having had under consideration the bill (H. R. 967) to provide for an additional justice of the supreme court of Idaho, and for other purposes, beg leave to report as follows:

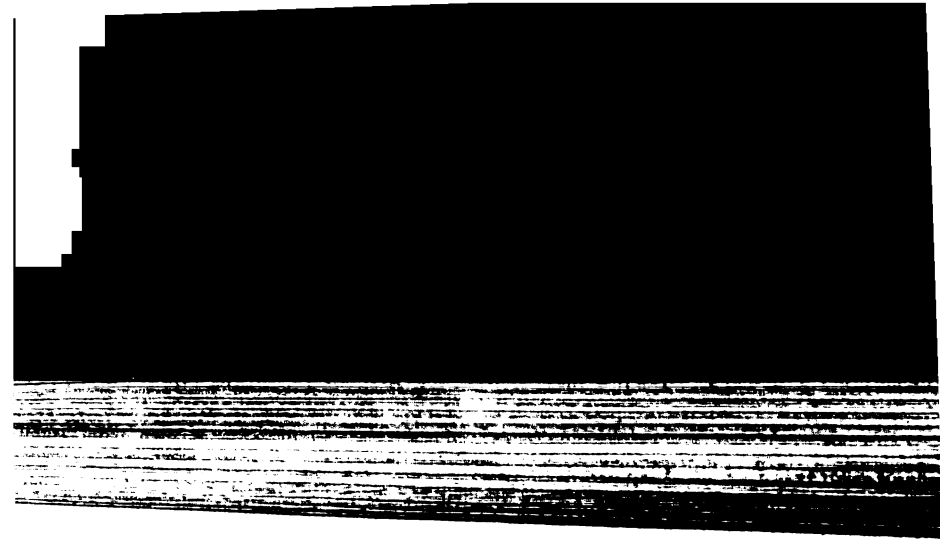
The bill precludes any judge from acting as a member of the supreme court in any action or proceeding brought to such court by writ of error, bill of exception, or appeal from a decision, judgment, or decree rendered by him as judge of the district court. The evil in this respect which this bill cures in the Territory, there being but three judges, has caused very great dissatisfaction. The three judges must act in each case in the supreme court in order that there may always be a majority for the decision of cases and the promulgation of opinions. This requires the judge of the district court to act in the supreme court and sit in judgment on and review his own decisions. This is unfair to the judge, and it is not unnatural that it should, in the minds of lawyers and interested parties, create suspicion of collusion among the judges to sustain the opinions of each other in the courts below.

In the Territory of Idaho each district is nearly as large as the State of Indiana, and three judges were necessary in past years, when the population was small and litigation light.

These judges, in addition to their duties as supreme court judges, are called upon to try all manner of causes arising under the laws of the United States and the Territory. They exercise in their respective courts the powers of common-law judges and chancellors and exercise the jurisdiction of United States district and circuit judges. In them (except the limited jurisdiction vested in justices of the peace and probate courts) is vested all the judicial powers of the Territory.

Attorneys, witnesses, and litigants have to travel, in many instances, hundreds of miles to reach the judge or court, and since the judges are not allowed traveling expenses and railroads are few and the cost of travel very high, the expenses of this character become a great burden to all concerned, which can in a measure be remedied by giving the Territory an additional judge. The courts in all the districts are burdened with accumulated business, and it is not possible to clear the dockets. The Territory is increasing rapidly in population and wealth, and the best interests of the people demand increased court facilities.

In view of the foregoing facts the committee recommend the passage of the bill.



51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 235.

PEARSON C. MONTGOMERY.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 4242.]

The Committee on War Claims, to whom was referred the bill (H. R. 4242) for the relief of Pearson C. Montgomery, report as follows:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[Senate Report No. 1186, Fiftieth Congress, first session.]

This claim has been twice considered by the Committee on Claims, in the Forty-eighth Congress and the Forty-ninth, and each time with the same result and in the same language as to the merits of the claim. The present committee, with a small change in correcting dates and figures, adopt the former report prepared by the late Mr. Pike, of New Hampshire, as No. 332 in the Forty-eighth Congress, and No. 34 in the Forty-ninth. It reads as follows:

[Senate Report No. 332, Forty-eighth Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 896) for the relief of Pearson C. Montgomery, having considered the same, beg leave to make the following report:

On the breaking out of the rebellion, Pearson C. Montgomery, of Memphis, Tenn., was the owner of the steamer *New National*, of about 480 tons burden, and was engaged in regular business with said boat on the Mississippi River.

At the outbreak of the rebellion she was impressed by the Confederates into their service without and against the consent of Montgomery, as he alleges. She continued in the service of the Confederates from that time to June 6, 1862, when Memphis was captured by the Union forces. She was at Memphis on that day under orders from the Confederate authorities to proceed down the river. Said orders were not obeyed, but after the fight Chief Clerk Nicholas M. Johnson, under the direction of said Montgomery, as he alleges, went on board the monitor *Benton* and delivered the *New National* to Admiral Davis, and Capt. Alexander Grant, of the Navy, was immediately placed in command of her, and she entered upon the service of the United States with the full consent of said Montgomery, as he alleges.

She continued in said service from June 6, 1862, to March 20, 1863, a space of two hundred and eighty-eight days, at the expiration of which time she was turned over to said Montgomery by the order of the Secretary of the Treasury, and thereupon he chartered her for one year to Admiral Porter, at the rate of $50 a day, and for a second year at the rate of $65 a day.

The said Montgomery now asks that he be paid at the rate of $50 a day for the two

hundred and eighty-eight days the *New National* was in the service of the United States, under the command of Captain Grant, amounting to the sum of $14,400.

While the *New National* was so held, and before March 20, 1863, she was libeled in the United States district court for the southern district of Illinois, under the act of Congress of July 13, 1861, entitled "An act further to provide for the collection of duties on imports, and for other purposes."

December 17, 1862, the district attorney for the southern district of Illinois, L. Weldon, wrote to the Solicitor of the Treasury as follows:

"A few days since I obtained in the district court of this district a decree of condemnation against two steamers, the *Kentucky* and the *New National*. The ground of condemnation is that they carried on traffic in violation of the act of July 13, 1862, and the President's proclamation of August 16, 1861.

"The claimants have given notice of appeal to the circuit court, and intend, also, to make an appeal to the Treasury Department for remission of the penalty. My judgment is that, in the case of the *New National* especially, no relief should be given.

"The claimant has taken an oath of allegiance to the rebel government, and made some statements, as shown by the testimony, tending to show him at heart a disloyal man. The testimony on which he predicates his defense is taken without cross-examination and without any evidence as to the truthfulness of his witnesses.

"I have taken great trouble and expense in preparing these cases for trial, having been as far south as Memphis in taking proof. I am thoroughly satisfied, from what I know or have heard outside of the legitimate proof of the case, that the *New National* is a fit subject of prize and capture."

The following letter from the Secretary of the Treasury, Salmon P. Chase, to the Solicitor of the Treasury, Edward Jordan, gives a further history of the case. The letter is dated January 16, 1863:

"Capt. Pearson Montgomery, master and owner of the steamer *New National*, seized and recently condemned in the United States district court for the southern district of Illinois, under the act of July 13, 1861, has made his petition before me for the remission of said seizure and release of the boat. The complete record in the case, together with a statement of United States District Judge Treat, and the evidence, are presented. From these it appears to my satisfaction that Captain Montgomery was not of his own will in the rebel service with his boat, and that so soon as he could he escaped therefrom and voluntarily turned her over to the Federal authorities. * * * I conceive that the discretionary power conferred on the Secretary of the Treasury of mitigating or remitting forfeitures in cases of this nature should be used to extend relief to loyal persons and to lighten the hardships of the war so far as consists with the public interest.

"In this view of the case, and for the reasons above stated, I feel justified in extending such relief as lies in my power to the petitioner, upon the usual terms. You will accordingly please instruct the proper district attorney to dismiss said suit and further proceedings against said steamer upon these conditions, viz, that the claimant shall pay all costs of whatsoever character incurred by the seizure and judicial proceedings, together with a fee of $100 to the United States district attorney, and agree that a certificate of probable cause of seizure shall issue from the court for the protection of the seizing officer."

Accordingly the proceedings in the circuit court were dismissed and an order made in accordance with the Secretary's letter, as appears of record in said court.

In 1880 Captain Montgomery presented his claim for $14,400 to the Treasury Department. May 25, 1880, a decision was rendered by the Third Auditor on the case, rejecting it, and in July of the same year the Second Comptroller made a long examination of the case and rejected it. Captain Montgomery made two points, first, that the boat was not forfeit because it did not ply between ports one declared to be in a section that was in insurrection and a port not in such a section. He maintained that though the boat did run between New Orleans, La., and Columbus, Ky., both ports were in the insurrectionary sections, even though Columbus had not been so declared by the President's proclamation of August 16, 1861.

The above-mentioned proclamation declared, among other States, Louisiana to be in state of insurrection, but did not so declare as to Columbus, Ky.

The law authorizing such proclamation is the act of July 13, 1861, and is as follows:

"SEC. 5. It shall be lawful, etc., * * * for the President by proclamation to declare that the inhabitants of such State, or any section or part thereof, where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares, and merchandise coming from said State or section into the other parts of the United States, and all proceeding to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same or conveying persons to or from such State or section, be forfeited to the United States.

"SEC. 6. That from and after fifteen days after the issuing of said proclamation, as provided in the last foregoing section of this act, any ship or vessel belonging in whole or in part to any citizen or inhabitant of said State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited to the United States."

It will be readily seen that the Treasury Department could not legally decide this point different from what it did.

Captain Montgomery's second point was that the remission of the forfeiture by the Secretary of the Treasury not only restored to him his vessel, but the right to recover for her services from the time she was first seized.

Secretary Chase does not seem to have considered in his above letter that the remission of the forfeiture went to that extent. His power of remission arose under section 8 of the act of July 13, 1861, which is as follows;

"That the forfeitures and penalties incurred by virtue of this act may be mitigated or remitted in pursuance of the authority vested in the Secretary of the Treasury by the act entitled 'An act providing for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned, approved March 3, 1797,' or in cases where special circumstances may seem to require it, according to regulations to be prescribed by the Secretary of the Treasury."

The statute of March 3, 1797, gives power to the Secretary to stay the prosecution and remit the penalty, if one has been imposed, but it goes no further. There is no power in the statute, express or implied, whereby the Secretary could restore to Captain Montgomery the right to be paid for the services of his boat while under the decree of forfeiture.

The Treasury Department could not do otherwise than overrule Captain Montgomery's second point.

Under that head he also claimed that there was an implied contract on the part of the Government to pay for the boat for these two hundred and eighty-eight days.

That argument must necessarily fall for the reason that the boat belonged to the Government by force of the statute from the moment it was used in violation of the law and the President's proclamation. It has been held that where a forfeiture is declared by a statute in a case like this that the forfeiture becomes complete at the moment the statute is violated.

Mr. Justice Ballard says:

"The decisions are uniform both in England and the United States. In the United States *vs.* 56 barrels of whisky, etc., 'that where a statute denounces a forfeiture of property as a penalty for the commission of crime, if the denunciation is in direct terms and not in the alternative, the forfeiture takes place at the time the offense is committed and operates as a statutory transfer of the right of property to the Government.'"

And he adds:

"That the subsequent conviction and judgment are simply the consummation of the proceeding that the law requires to be instituted to ascertain the fact of the forfeiture." See also United States *vs.* 1,960 bags of coffee, 8 Cranch, 398; Gelston *vs.* Hoyt, 3 Wheat., 311; Caldwell *vs.* United States, 8 How., 381; Wood *vs.* United States, 16 Peters, 362; Henderson Distilled Spirits, 14 Wal., 16.)

As to the loyalty of Captain Montgomery the testimony is somewhat conflicting, but the committee are inclined to adopt the view of the Secretary of the Treasury, Hon. Salmon P. Chase, that Captain Montgomery was loyal to the United States Government, and that his acts inconsistent with that were not of his own free-will. It appears that as soon as the coercive acts of the Confederates were removed he voluntarily surrendered the *New National* to the United States.

It can not be supposed that the Secretary of the Treasury intended at the time he remitted to Captain Montgomery the forfeiture, and requiring him to pay costs and $100, that he was to have a claim against the Government up to that time for the use of it during the time it was in possession of the Government, and while it was in fact the property of the Government. Such a supposition is simply absurd.

The remission of the forfeiture can not have the effect of giving the right claimed in this case.

The statute of March 3, 1797, gives power to the Secretary to stay the prosecution and remit the penalty, if one has been imposed, but it goes no further. It does not confer the power to set aside or reverse the judgment. Its effect is to remit the penalty and restore the property, but the judgment and all its attendant disabilities, except those so remitted, stand, and the claimant is affected thereby.

But it appears from this case that this remission of the forfeiture was on the 16th day of January, 1863, but that the vessel remained in the use of the Government and was not surrendered to the claimant till the 20th day of March following, a period of sixty-two days. It does not distinctly appear where the boat was during this time. It does not appear but that the Government had the use of it during this time. The claimant alleges that it had, and the evidence tends strongly to show it. This point

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 236.

GEORGE K. OTIS.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Boothman, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3123.]

Your committee having considered the said bill, find that since said bill was introduced into the House at this present session of Congress the claimant George K. Otis has departed this life. We therefore recommend that the title of the bill be amended so as to read: "A bill for the relief of the legal representatives of George K. Otis" and that the words "to the legal representatives of" be inserted in the body of the bill immediately following the word "allow" in line 4 thereof.

We also find that at the last session of the Fiftieth Congress a bill (S. 3348) for this purpose was passed by the Senate, and favorably reported by the Committee on Claims of the House, with an amendment fixing a definite amount to be paid Otis instead of allowing him a pro rata increase of pay as contemplated by the Senate bill.

The reports upon the bill last referred to, and which your committee hereby adopt as a part of this report, are as follows:

SENATE REPORT.

Otis was contractor on "star" route 6771, New York City, during the four years, contract term, ended June 30, 1885, and the object of this bill, as indicated by its text, is to secure for him pro rata increase of compensation for any increase of service which he may have performed at the instance of the Post-Office Department during said period, less corresponding deductions for any diminution or curtailment of service, or for any failures to perform service according to contract. In other words, the aim and purpose of the bill is simply to apply to said contract the same provisions of law and regulations in the matter of increase or decrease of compensation as during the same period were held applicable to "star" service—and that it was a "star route" is, in effect, admitted by the Post-Office Department *in paying for it out of the appropriations specially provided for "star transportation"* (see official letter from Sixth Auditor of July 22, 1888). These provisions are as follows:

"Sec. 618. Increase of compensation for increased service. Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service, and when any such additional service is ordered the sum to be allowed therefor shall be expressed in the order, and entered upon the books of the Department; and no compensation shall be paid for additional regular service rendered before the issuing of such order (R. S., sec. 3960, and sec. 618, Postal Laws and Regulations, edition 1875).

"Sec. 621. Decreased compensation for decreased service. The Postmaster-General may discontinue or curtail the service on any route, in whole or in part, in order to place on the route superior service, or whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any other cause; he allowing, as full indemnity to contractor, one month's pay on the amount of services dispensed with, and a pro rata compensation for the amount of services retained and continued (sec. 621, Postal Laws and Regulations, edition 1879).

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contract could not be canceled and the service relet without a great increase of cost to the United States; and that the conclusion thus arrived at by said commission was correct is conclusively shown by the fact that the present contractor's compensation is 100 per cent. more than that received by your petitioner."

It will be observed that the more important of the statements thus made by Mr. Otis pertain to either public acts or matters of official record, and as the Postmaster-General does not controvert the accuracy of the latter, the same may safely be assumed. It should, however, be noted in this connection that, as was to have been expected, the Postmaster-General upholds the validity of the contract clause which deprived Otis of increased pay for additional service. In regard to the *equities* of the case we understand that while the Postmaster-General is favorably impressed with the same and deems them sufficiently strong to warrant the legislation proposed, he declines to express any opinion on that subject for the reason, as stated by him, that it is the peculiar province of the legislative, not the executive, branch of the Government to consider and determine whether or not a case of this character possesses equitable merit. That he has a just appreciation, however, of the character of Otis's contract and the hardships which its execution entailed upon him is shown by the following extract from his letter already referred to:

"The necessities of the service in New York during this contract term were such that but little lenity could be shown to the contractor by reason of the fact that he was performing a contract for inadequate compensation and was losing instead of deriving profit from his undertaking."

Conclusions of your committee:

(1) On the legal aspects of the case they deem it unnecessary to express an opinion.

(2) Viewed from an equitable stand-point—and it is to be observed that it is on equitable grounds alone that Otis bases his petition for relief—the case, in the opinion of your committee, possesses great merit.

The contract appears to have been at once the most important and burdensome in the whole postal service; it contains not only all the conditions found in ordinary star contracts, but seeks to impose, and in fact did impose, on the contractor other and more onerous ones, and that its execution necessarily absorbed not only the entire contract pay, but all the contractor's other resources, and drove him into bankruptcy besides.

It therefore occurs to your committee that the object which this bill seeks to effect, namely, to subject the contract in question to all the provisions relating to star-route service, as well those that make *for* as those that make *against* the contractor, can not reasonably be objected to; and they therefore recommend the passage of the bill (S. 3348) without amendment.

HOUSE REPORT.

Since the date of the Senate report the following letters have been received by your committee from Hon. Thomas L. James and Frank Hatton, who were Postmasters-General during the greater portion of the period covered by Otis's contract term, and from Hons. Richard A. Elmer, H. D. Lyman, and W. B. Thompson, who were Second Assistant Postmasters-General during the entire term, and all of whom were entirely familiar with the circumstances and peculiar hardships of Otis's case, and who unite in recommending the relief proposed by the bill:

WASHINGTON, D. C., *August* 8, 1888.

DEAR SIR: At the request of Mr. George K. Otis, of this city, who was contractor on route No. 6771 for four years from July 1, 1881, I beg leave to say that in my judgment the claim set forth in Senate bill 3348, Fiftieth Congress, first session (which I understand has been favorably reported upon by the Senate committee—Report 1948) is based upon equitable grounds by reason of the facts set forth in the third paragraph of that report, in which it is stated that "during the term of his contract there was such an enormous increase in the weight of the mails transported by him that no one not possessed of the power of divination could have anticipated the same—such increase being due to a combination of causes; prosperity and activity in all commercial industries, cheapening of letter postage from 3 to 2 cents per one-half ounce, and extending the pound rates to newspapers and periodicals when sent by other than the publisher or news agents (see acts of March 3, 1883, 22 Stats., 455, and June 9, 1884, 23 Stats., 40)."

There can be no doubt that the conditions and changes named in the report resulted in a very large increase of the bulk of mail matter, and that Mr. Otis, in order to keep pace with the resulting demands of the service, incurred a large expenditure such as could by no possibility have been foreseen to be necessary, and which left him practically without any fair compensation.

While I am aware that it would be impolitic to allow such a case as this to be made a precedent, I nevertheless do not hesitate to say that the circumstances of this case are such as should commend Mr. Otis's claim to the favorable consideration of your committee, and would justify it in recommending the passage of the bill in question.

Very respectfully,

THOMAS L. JAMES,
Late Postmaster-General.

Hon. T. J. CAMPBELL,
Committee on Claims, House of Representatives, Washington, D. C.

I fully concur in the opinions expressed by Mr. James. I was well acquainted with the facts at the time.

W. B. THOMPSON,
Ex-Second Assistant Postmaster-General.

THE AMERICAN SURETY COMPANY,
New York, August 4, 188.

DEAR SIR: Mr. George K. Otis, who was contractor on route 6771, New York City, for the contract term beginning July 1, 1881, requests us to give you our opinion upon the merits of his claim as embodied in Senate bill 3348, Fiftieth Congress, first session, and which is reported upon favorably by the Committee on Post-Offices and Post-Roads of the Senate (Report No. 1948, Fiftieth Congress, first session).

We are cognizant of the difficulties under which Mr. Otis labored in the performance of the service on the route in question, and as his petition and the report asks for the favorable action of Congress on the ground of equity alone, we are disposed to concur in the recommendations of the committee as far as they are expressed in the third paragraph at the foot of page 2 in said report, which is as follows:

"(3) That during the term of his contract there was such an enormous increase in the weight of the mails transported by him that no one not possessed of the power of divination could have anticipated the same; such increase being due to a combination of causes, prosperity and activity in all commercial industries, cheapening of letter postage from 3 cents to 2 cents per half ounce, and extending the pound rates to newspapers and periodicals when sent by other than the publisher or news agents." (See acts of March 3, 1883, 22 Stat., 455, and June 9, 1884, 23 Stat., 40.)

It is perfectly plain to us that the very large increase in the amount of mail transported during the contract term, and the consequent demand upon the contractor by the postmaster of New York, under the terms of the contract, could not be anticipated by any person, no matter how expert, and the expression that it could not be anticipated by any person "not possessed of the power of divination" seems to us a fair statement of the situation.

Upon the foregoing it will readily appear to your committee that unanticipated demands upon the contractor for largely increased service made the compensation originally fixed entirely inadequate.

While we are bound to say that we regard the legal position of the Department in handling this intricate wagon service in the cities in the manner it does, as not only proper and necessary for the good of the service, but entirely within the true intent and meaning of the statutes touching mail transportation, and particularly those laws touching the method of compensation for star service, we are nevertheless bound to say that we believe in this particular case, which ought not to be treated as a precedent, the committee in recommending the passage of the bill will deal equitably and fairly.

Yours, respectfully,

RICHARD A. ELMER,
H. D. LYMAN,
Ex-Second Assistant Postmasters-General.

Hon. T. J. CAMPBELL,
Of Committee on Claims, House of Representatives, Washington, D. C.

Washington, D. C., December 3, 188.

MY DEAR SIR: I have read the letters of Hon. Thomas L. James and Hons. R. A. Elmer, W. B. Thompson, and H. D. Lyman, approving and indorsing the bill for the relief of George K. Otis, which has passed the Senate and is now under consideration by the subcommittee of the Committee on Claims, of which you are chairman.

I fully and heartily concur in the views expressed by those gentlemen, and believe that the passage of the bill in question will be an act of simple justice to Mr. Otis.

Very respectfully,

FRANK HATTON,
Late Postmaster-General.

Hon. TIMOTHY J. CAMPBELL,
House of Representatives.

Your committee is also in possession of an elaborate report made by a commission of experts appointed in February, 1884, by Postmaster-General Gresham, to investigate the operations of the mail-messenger and transfer service in New York. In this report the commissioners state, after thorough examination of the service and interviews with prominent transfer companies of New York City, that it would be impossible for the Department to contract for the mail-messenger and transfer service then being performed by Mr. Otis without paying at least $45,000 per annum more than was being paid to Otis.

The views of the committee seem to have been fully confirmed at the next letting of the contract in April, 1885, as the amount paid per annum by the Department from July 1, 1885, was about $125,000 against $63,200 paid to Otis.

The immense and unprecedented increase in the weight of mails during Otis's term was very largely the result of the legislation by Congress (acts of March 3, 1883, 22 Stat. L., 455, and act of June 9, 1884, 23 Stat. L., 40), *both acts having been passed after the execution of Otis's contract*, by which letter postage was reduced from 3 cents to 2 cents per half ounce and pound rates extended to newspapers and periodicals.

Referring to this feature of the case, Postmaster-General Dickinson, under date of January 8, 1889, states:

"I have no doubt it should be borne clearly in mind that the increased service contemplated by Otis, under the advertisement was merely the natural increase of business usually incident to the lapse of time, and that he could not have anticipated that during the term of his contract the rates of postage would be enormously reduced by Congress.

It is a matter of common knowledge that reductions of postage always increase the volume of the mails, and that the increase is in a large degree proportionate to the extent of the decrease of postage."

The Postmaster-General, in the same communication, also states:

"I have no doubt, from evidence heretofore submitted to me, that the performance of this contract was the cause or led to the financial ruin of Otis. Neither have I any doubt that the largely increased volume of mails led to very many orders on the part of the postmaster (at New York) for increased trips. These considerations present an equity to Congress with which this Department has nothing to do [but suggests] that if relief is intended by Congress it should be given in definite form by naming a sum, such as a year's pay, $63,200, or six or nine months' pay."

In view of the suggestions thus made by Postmaster-General Dickinson and the difficulty of determining the amount which would be paid Otis if allowed pro rata pay for increase of service, your committee recommend the passage of Senate bill 3343, with the following amendment: Strike out all after the word "directed," on line 4, and insert in lieu thereof, "to allow George K. Otis, as compensation for extraordinary service performed by him as contractor on route 6771, New York City, during the contract term ended June 30, 1885, such sum not exceeding six months' contract pay, as may seem to him just and equitable, and a sum sufficient to pay the amount thus to be allowed is hereby appropriated out of any money in the Treasury not otherwise appropriated." Your committee also recommend that House bill 9368, which is identical with Senate bill 3348, do lie on the table.

Your committee further say that as indicating the extraordinary expansion of the mail-messenger and transfer service during the period in question, attention is called to these facts, disclosed by official advertisements of February 1, 1881, and September 15, 1884: May 21, 1881, date of execution of the contract therefor, the trips run and distance traveled per week were 1,501 and 3,254, respectively; September 1, 1884, ten months prior to expiration of contract term, the trips run and distance traveled were 2,621 and 6,492, respectively, being an in increase of nearly 170,000 miles per annum.

A majority of the committee, therefore, recommend that the bill, amended as first hereinbefore suggested, be passed.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 237.

PUBLIC BUILDING AT SPRINGFIELD, MO.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Kerr, of Iowa, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 516.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 516) for the increase of the limit of cost for the erection of a public building at Springfield, Mo., have had same under consideration and report:

At the first session Fiftieth Congress an appropriation of $100,000 was made for the erection of a public building at Springfield, Mo. At second session of same Congress a letter was addressed Mr. Freret, the then Supervising Architect of the Treasury, relative to the needs of the public service at Springfield.

In reply Mr. Freret stated the amount of floor space needed, and further stated that the amount of money appropriated was not sufficient to erect a public building to meet the wants of the Government, and suggested that an additional appropriation of $45,000 be made.

A bill was introduced increasing the limit of cost $45,000. This bill was reported favorably to the House by the Committee on Public Buildings and Grounds and its passage recommended, but failed to pass by reason of not being reached on the Calendar.

The committee has given careful consideration to this bill and diligently inquired into the needs of the public service at Springfield, Mo., and recommend that the words "seventy-five" in line 7 be stricken out and the word "fifty" substituted, and the bill as so amended to pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 239.

LIGHT-STATION IN THE VICINITY OF BRADDOCK'S POINT, LAKE ONTARIO.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Browne, of Virginia, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 573.]

The Committee on Commerce, to whom was referred House bill No. 573 for the establishment of a light-station in the vicinity of Braddock's Point, Lake Ontario, in the State of New York, have had the same under consideration and beg leave to report it back with an amendment, and recommend its passage.

The recommendation of the Light-House Board on the subject is hereto appended as a part of this report.

Treasury Department,
Washington, January 10, 1890.

Sir: I have the honor to acknowledge the receipt of your reference of fourteen House bills relating to light-house affairs, asking suggestions upon them from the Department.

In reply to so much of the reference as applies to House bill No. 573, which authorizes that there be appropriated, out of any money in the Treasury not otherwise appropriated, $20,000 for the establishment of a third-order light-station between Genesee and Oak Orchard light-stations, Lake Ontario, New York, at such point as may be selected by the Light-House Board, I have to say that the establishment of this station is recommended by the Board on page 135 of its annual report for 1889, an extract from which bearing upon the matter is herewith inclosed, together with the bill (H. R. 573) in question.

Respectfully, yours,

Geo. S. Batcheller,
Acting Secretary.

Hon. Charles S. Baker, M. C.,
Chairman Committee on Commerce,
House of Representatives, Washington, D. C.

[Extract from the annual report of the Light-House Board for the fiscal year ending June 30, 1889, page 135.]

Braddock's Point, Lake Ontario, New York.—While there are several small lights between Thirty-Mile Point Light and Oswego Light, there is no light of any importance in this stretch of about 100 miles which can be used by vessels going up or down the lake as a coast light. For some time efforts have been made by navigators to accomplish the establishment of an additional light of such height and brilliancy that it can be used as a point of departure. It is therefore recommended that a third-order light-station be established between Genesee and Oak Orchard light-stations somewhere in the vicinity of Braddock's Point, at an estimated cost of $20,000.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 242.

ERECTION OF A NEW TOWER NEAR THE SITE OF THE LIGHT-HOUSE ON SMITH'S ISLAND, VIRGINIA.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BROWNE, of Virginia, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 901.]

The Committee on Commerce, to whom was referred House bill 901 for the erection of a new tower near the light-house on Smith's Island, in Virginia, have had the same under consideration, and beg leave to report it back and recommend that it do pass.

Your committee append the recommendation of the Light-House Board on the subject as a part of its report.

TREASURY DEPARTMENT,
Washington, January 10, 1890.

SIR: I have the honor to acknowledge the receipt of your reference of fourteen House bills relating to light-house affairs, asking suggestions upon them from the Department.

In reply to so much of the reference as applies to House bill No. 901, which authorizes the erection, near the site of the light-house on Smith's Island, Virginia, of a tower for a first-order light, to replace the present one now being washed away by the encroachments of the sea, provided that the same shall not cost more than $150,000, I have to say that the establishment of this light station is recommended by the Light-House Board on pages 88 and 89 of its Annual Report for 1889, an extract from which, bearing upon the matter, is herewith inclosed, together with the bill (H. R. 901) in question.

Respectfully, yours,

GEO. S. BATCHELLER,
Acting Secretary.

Hon. CHARLES S. BAKER, M. C.,
Chairman Committee on Commerce,
House of Representatives, Washington, D. C.

[Extract from the Annual Report of the Light-House Board for the fiscal year ending June 30, 1889, pages 88 and 89.]

341. *Cape Charles, on Smith's Island, entrance to Chesapeake Bay, sea-coast of Virginia.*—Extensive repairs are needed to tower, dwellings, and fences. In April an inspection was made of the shore-protection constructed in 1886. The result was not such as to confirm the views formed at a previous visit (less than a year ago) that a considerable extension of the protection wall was justified by the effects already produced by the shore-protection. A heavy northeasterly gale, lasting two days, had visited the locality early in April, 1889, which washed away about 75 feet of the jetty and undermined the south end of the protection-wall; as a result of the storm there were unprecedentedly high tides, and at one time the station was entirely surrounded by

water. The retreat of the shore is not local, but is general all along the island. T advance of high-water line between 1883 and 1889 has been 240 feet, an average of feet a year. The prolongation of the present line of high tide includes one of t keeper's dwellings, and were there no barrier or protection-wall, the sea would within 50 feet of the tower. Unless there is a marked change in the conditions whi now exist, the general line of high water will advance beyond the tower and sea-wa

Any work for the protection of this site must extend for a long distance to t northeast and would be very expensive and of doubtful efficiency. A safer and desi less more economical plan is to build a new light station where it will not be expos to danger. This can be done for the sum of $150,000, and an appropriation of th amount is earnestly recommended.

51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 243.

LEAVE OF ABSENCE FOR OFFICERS AND EMPLOYÉS IN THE CUSTOMS SERVICE.

FEBRUARY 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. ATKINSON, from the Committee on Expenditures in the Treasury Department, submitted the following

REPORT:

[To accompany bill H. R. 432.]

The Committee on Expenditures in the Treasury Department having had under consideration the bill (H. R. 432) introduced by Mr. Cogswell, beg leave to report:

That employés of other departments who receive a per diem compensation have had leave of absence with pay accorded them by various acts of Congress, notably the employés of the Government Printing Office by acts of Congress June 30, 1886, for fifteen days in each year, extended to thirty days by act of August 1, 1888; and of the Bureau of Engraving and Printing by act of March 3, 1887, and letter-carriers by act of June 27, 1884. It seems no more than just that the officers of customs who receive per diem pay should have the same privileges as other employés of the Government who are paid either by annual salaries or in other ways, and your committee therefore report this bill with a favorable recommendation, but recommend that it be amended by inserting the words "be entitled to," after the word "shall," in the fourth line.

The attention of the committee having been called by the Secretary of the Treasury to the fact that no method of punishing officers of the customs service, other than by dismissal, is now authorized by law, report the bill with an amendment, giving authority to the several collectors of customs, with the approval of the Secretary of the Treasury, to suspend any customs officers for a period not exceeding thirty days for any one cause. This power the committee believe should be lodged in the officers named, and they therefore recommend that the bill so amended do pass.

They further recommend that bills H. R. 55217 and 602, upon the same subject, being covered bv the bill herewith reported, shall lie upon the table.

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51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 244.

DANIEL M. DULL.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr SCULL, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4527.]

The Committee on Pensions, to whom was referred the bill (H. R. 4527) granting a pension to Daniel M. Dull, have considered the same and report as follows:

The claimant in his prayer for relief states that in July, 1847, he was a sutler of the First Pennsylvania Volunteers and was stationed with said regiment at the Fortress of Perote, in Mexico; that an independent company of volunteers, which had been enlisted from Mifflin and Huntingdon Counties of Pennsylvania, commanded by Captain Caldwell (who was mortally wounded in an attack on the Garita de Balen, City of Mexico, September 13, 1847), came to Perote in the latter part of July, 1847.

That he (claimant) disposed of his sutlership and went with said company as a volunteer to the valley and City of Mexico.

That when said company reached Puella it was assigned to the Second Pennsylvania Regiment and lettered Co. M.

That Lieutenant Bowers, M. D., of said company, was detailed to act as an assistant surgeon and claimant took his place, doing duty as a lieutenant of said company, and served in all of the battles in which it was engaged in the valley of Mexico, notably in the attack on the Fortress of Chapultepec, the Garita de Balen, and the entry into the city of Mexico.

That he rendered said service without being regularly mustered into the service of the United States, and of course served without having claimed or received any compensation therefor.

That when the City of Mexico passed into the possession of the United States Army he believed there would be no more battles and he returned to the United States without (as hereinbefore stated) having been mustered into the service of the United States, and hence he was never recognized on the roll of said company as a volunteer soldier. He prays that said service be recognized and that he be allowed a pension therefor, the rate to be that of a second lieutenant.

William Brindle, late lieutenant-colonel Second Pennsylvania Regiment, Mexican war, testifies to claimant's service as alleged and adds that—

As the said Dull was not regularly mustered into the service of the United States his name does not appear upon the muster-rolls of said company, and consequently he is deprived of the credit due to him of being recorded as one of those who aided

to achieve the triumph. Deponent deems it to be an act of justice that Congre should pass an act authorizing and requiring the name of the said Daniel M. Dull be placed on the pension-roll as a lieutenant of said Company M of said regiment.

Mr. Atkinson, Representative in Congress from the State of Pen sylvania, states that the claimant is about seventy-three years old, an by reason of business reverses has had his property sold out at sheriff sale. Mr. Atkinson also vouches for the reliability of the statements the claimant and Colonel Brindle.

Your committee recommend that the bill do pass, with the followin amendment: Strike out the words "that of a second lieutenant," i lines 8 and 9 of said bill, and substitute therefor the words "seventee dollars per month."

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 245.

AMENDMENT OF REVISED STATUTES.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Rogers, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 98.]

The Committee on the Judiciary, having had under consideration the bill (H. R. 98) to amend section 351 of the Revised Statutes of the United States, report the same back favorably and recommend that it do pass.

The committee report the following facts:

From and including the fiscal year 1885 the chief clerks of the Executive Departments have been paid annual salaries as follows:

State	$2,750
War	2,750
Navy	2,500
Treasury ($2,700 and $300 as superintendent of building)	3,000
Post-Office	2,500
Interior ($2,500 and $250 as superintendent of building)	2,752
Agriculture	2,500
Justice ($2,200 and $250 as superintendent of building)	2,450

In the Revised Statutes, edition of 1878, the salaries appear as:

State, $2,500 (sec. 201); War, $2,500 (sec. 215); Navy, $2,500 (sec. 416); Treasury, $2,500 (sec. 235); Post-Office, $2,200 (sec. 393); Interior, $2,200 (sec. 440); Agriculture, $2,000 (sec. 522); Justice, $2,200 (sec. 351).

Changes were made in these salaries as shown in the accompanying table:

Department.	Act.	Changed to—
State	Legislative act of March 3, 1883 (22 Stat., p. 538)	$2,750
War	Legislative act of July 7, 1884 (23 Stat., p. 179)	2,750
Treasury	Act March 3, 1875, (R. S. Supplement, p. 159)	3,000
Post-Office	Legislative act of July 7, 1884 (23 Stat., p. 190)	2,500
Interior	Legislative act of June 20, 1874 (18 Stat., p. 103)	2,500
	Legislative act of June 19, 1878 (20 Stat., p. 198)	2,700
	Legislative act of June 15, 1880 (21 Stat., p. 230)	2,750
Agriculture	Act of May 19, 1882 (22 Stat., p. 89)	2,200
	Act of June 5, 1884 (23 Stat., p. 36)	2,500
Justice	Legislative act of August 5, 1882 (22 Stat., p. 253)	2,450

A comparison of these tables shows that with the exception of the Department of Agriculture (quite recently raised to the position of an Executive Department) and the Department of Justice the chief clerks of the Departments receive for their services as such, three of them $2,500 each, one $2,700, and two $2,750 each; the one at $2,700 and

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 246.

VINEYARD HAVEN HOSPITAL.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Randall, of Massachusetts, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 435.]

The Committee on Commerce, having had under consideration the bill (H. R. 435) to improve the Marine Hospital at Vineyard Haven, Mass., beg leave to report the same with an amendment, and recommend that it do pass.

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51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 247.

VALENTINE SAUPPE.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MAISH, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2144.]

The Committee on War Claims, to whom was referred the bill (H. R. 2144) for the relief of Valentine Sauppe, report as follows:

The proof filed in support of the bill shows that the petitioner, Valentine Sauppe, of Adams County, Pa., at the time of and subsequent to the battle of Gettysburgh, owned a bakery in the town of Gettysburgh; that the petitioner furnished the hospitals at said place with crackers, flour, and bread, under a verbal contract with Dr. Ward, who had charge of said hospitals; that the petitioner furnished crackers, flour, and bread to said hospitals for about six weeks. Claim stated at $664. That the officer in charge of said hospitals failed to give the petitioner vouchers for the same for the reason that he was suddenly ordered to the Army of the Potomac; that the petitioner placed his claim in the hands of an attorney, who filed the same in the War Department, but nothing was ever done with it. The claimant is a poor and ignorant man, and had supposed his claim was being duly prosecuted.

Your committee is of the opinion that the claimant should be paid $664, and report back the bill and recommend its passage with the following amendments:

In line 4, after "Sauppe," insert "Adams County, Pennsylvania," and in lines 4 and 5 strike out "one thousand seven hundred and ninety-eight" and insert in lieu thereof "six hundred and sixty-four."

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Mr. MAISI

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51ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 249.

SCHUYLKILL COUNTY, PA.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MAISH, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 5601.]

The Committee on War Claims, to whom was referred the bill (H. R. 5601) to authorize the proper accounting officers ot the Treasury to and it and pay the claim of the county of Schuylkill, in the State of Pennsylvania, for money advanced by it under allotments made by soldiers from said county during the late rebellion, etc., report as follows:

That the facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

The committee has examined the papers in this case; and, concurring in the opinion expressed by the committee of the Fiftieth Congress, and adopting their report, they report back the bill and recommend its passage.

[House Report No. 140, Fiftieth Congress first session.]

That the facts out of which this bill for relief arises will be found stated in House Report No. 1615, of the Committee on War Claims of the Forty-ninth Congress, a copy of which is hereto appended and made a part of this report.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[House Report No. 1615, Forty-ninth Congress, first session.]

July 22, 1861, Congress passed an act entitled "An act to authorize the employment of volunteers to aid in enforcing the laws and protecting public property." The twelfth section of said act is as follows:

"SEC. 12. *And be it further enacted*, That the Secretary of War be, and he is hereby, authorized and directed to introduce among the volunteer forces in the service of the United States the system of allotment tickets now used in the Navy, or some equivalent system, by which the family of the volunteer may draw such portions of his pay as he may request."

In pursuance of said act, September 19, 1861, an order was issued from the War Department, of which the following is the second paragraph:

II. In accordance with section 12 of the act of Congress of July 22, 1861, entitled "An act to authorize the employment of volunteers," the following method of enabling such of the volunteer forces of the United States as may desire it, to assign portions of their pay for the benefit of their families is hereby adopted:

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 250.

CLAIMS AGAINST THE UNITED STATES.

February 17, 1890.—Ordered to be printed and recommitted to the Committee on War Claims.

Mr. Thomas, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 7158.]

The Committee on War Claims, to whom was referred the bill (H. R. 7158), authorizing the Quartermaster-General and the Commissary-General to re-examine claims against the United States, and extending time for filing such claims, ask to have same printed and recommitted to the committee.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 252.

PORT OF SAN ANTONIO.

February 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Lind, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 3352.]

The Committee on Commerce, to whom was referred the bill (H. R. 3352), to extend to the port of San Antonio, in the customs collection district of Saluria, in the State of Texas, the privileges of the seventh section of the act approved June 10, 1880, entitled "An act to amend the statutes in relation to immediate transportation of dutiable goods and for other purposes," submit the following report:

The city of San Antonio has a population exceeding 50,000 and is the railroad center of Southwestern Texas. Its wholesale and retail trade is very large, with shipping facilities fully equal to those presented by any city of the same size in the Union.

It has a direct and very large trade with Mexico and is connected by rail with all of the principal cities and towns in the State, and also has direct railway connections with San Francisco, Cal., and St. Louis, Mo.

Its population is rapidly increasing, and its growth in the matter of trade and commerce has been rapid and substantial. This bill has been favorably reported by the honorable Secretary of the Treasury and your committee recommend its passage.

WAR DEPARTMENT,
Washington City, April, 1878.

Mr. DAVID H. MITCHELL,
Leavenworth City, Kansas:

SIR: In answer to your letter of January 19 and February 18, requesting a copy of Lieut. Col. Rufus Saxton's report upon your claim for forage alleged to have been delivered under contract at Fort Harker, Kansas, in the years 1867, 1868, and 1869, and not paid for, I am directed by the Secretary of War to inform you that he has approved a recommendation of the Quartermaster-General that no copy of the report in question should be furnished, but that the claim be rejected.

It is believed that the proper tribunal before which a claim for payment for forage alleged to have been delivered ten years ago should have been prosecuted was the Court of Claims, and that now Congress only can properly be asked to entertain it in the absence of any special legal provision and appropriation for auditing and settling such a claim by executive officers.

Very respectfully,

HENRY GOODFELLOW,
Judge-Advocate.

(Indorsed:) 11940. 5029. War Dep't, 1878. Filed May 15, 1878.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., March 29, 1878.

To the honorable the SECRETARY OF WAR:

SIR: I have the honor to return the papers in the claim of D. H. Mitchell for forage alleged by him to have been delivered under contracts at Ft. Harker, Kansas, in the years 1867, 1868, and 1869, and not, as alleged by him, paid for. He asks for copy of the report of an investigation of this case ordered by the Secretary of War, March 19th, 1877.

The report of Lt. Col. R. Saxton, dep. q'rm'r gen'l, U. S. A., chief quartermaster Department of the Missouri, who made the investigation, is herewith.

I recommend that he be not furnished with a copy of the report in question, and that the case be dismissed.

1st. He does not come with clean hands. It is on the record that he has been already once detected, indicted, tried, and convicted of fraud in attemping to obtain double payments upon account of this forage business at Fort Harker; and that he did obtain such double payments which were detected in the investigation of his attempted fraud above referred to, the amount of which was recovered to the United States by withholding it from money due him under a contract for wood at Ft. Wallace, Kas. (made before the discovery of this fraud), in accordance with opinion of the Second Comptroller, concurred in by the Secretary of War.

2nd. The records searched by Col. Saxton are in part those of Capt. Inman, who appears to have made affidavit in Mitchell's favor. General Court-Martial Order No. 19, W. D., A. G. O. of 1872, announcing the cashiering of Capt. Inman, will show that he is not a competent witness against the United States in these transactions, and that entries in his records, in which Col. Saxton finds errors, are not conclusive evidence against the United States.

3rd. The officers of the United States should scarce furnish to this convicted criminal, whose claims and charges against the United States have been judicially found to be unreliable, evidence on which to make new claims. One overpayment made to him was made on an order from a Secretary of War whom he succeeded in deceiving.

4th. There is no appropriation at the disposal of the War Department out of which the money which he claims could be paid, even were it proved that any was due.

5th. The proper tribunal before which to prosecute a claim for payment for forage alleged to have been delivered ten years ago is the Court of Claims, or Congress itself, in the absence of any special legal provision and appropriation for auditing and settling such a claim by executive officers.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General, Bv't Maj. Gen'l, U. S. A.

405. Q. M. G. O., 1877. 1627. Q. M. G. O. 1877; 167 Q. M. G. O. 1878; 361 Q. M. G. O. 1878; 493, 1042, 1076, and 1403. Q. M. G. O. 1876; and 185, and 206 Q. M. G. O. 1877, accompanying Cl. "Q" 134--1875. 31 enclosures.

(Indorsed:) Washington, March 29, 1878. 2179. War Dep't 9, 1877. 621. 8. The Quartermaster-General, U. S. Army. Returns papers in the claim of D. H. Mitchell,

with report of investigation of Col. Saxton C. Q. M. Dep't Mo. & other papers in the case. Recommends dismissal of case; also that Mitchell be not furnished copy of the report of Col. Saxton. T-75. File with 361 Q. M. G. O. 1878. 11940. Filed May 15, 1878.

WAR DEPARTMENT,
April 3d, 1878.

The recommendation of the Quartermaster-General is approved.

GEO. W. MCCRARY,
Secretary of War.

33 enc's.

WASHINGTON, D. C., *May 8th*, 1878.

Hon. GEO. W. MCCRARY,
Sec'y of War:

DEAR SIR: In the matter of my claim for payment for grain, furnished the Government at Fort Harker, Kansas, in 1868 and '9, I most respectfully request that you give the same most careful consideration, with the view of coming to a conclusion as to the amount now due me, and the prompt payment of the same. The grain furnished by me, under my contract with the Government, was under great difficulties, and at a time when prices were high; at the same time I was furnishing corn at Fort Harker I was engaged in furnishing large quantities of forage at Fort Hayes, Fort Riley, and Fort Leavenworth, and also furnishing beef for the Army, then on the plains, between Fort Harker and Denver. I was also engaged in furnishing supplies to the Osage Indians in southern Kansas, through the Commissary Dept. of the Army. I trusted in all cases to the good faith of the Government in the matter of receiving these supplies, and I feel that I ought not to suffer for any neglect of the officers at Fort Harker, where the grain was delivered for which I now ask payment. In the consideration of my case, I ask your attention to the following facts:

1st. All the corn furnished by me at Fort Harker was shipped to that post via the Kansas Pacific Railroad.

2d. It is shown by the bills of lading in the office of the auditor of the said railroad co. that thirty-three car-loads of corn were shipped by me to the quartermaster at Fort Harker during the fall and winter of 1868 and '9.

3d. It is further shown by the testimony of Mr. Griffith, of Lawrence, Kan., that one car-load of corn was shipped to Fort Harker by him intended for me, and put in on my contract.

4th. A Mr. Burnell, at Grantville, Kan., ship'ed in his own name intended for me, and put in on my contract, two or three car-loads of corn. Mr. Burnell left Kansas some years ago, and I have been unable to find him and obtain his testimony. I am confident that telegraphic or other correspondence between the quartermaster then at Fort Harker and Fort Leavenworth will show that this corn was sent to Fort Harker by Mr. Burnell. I paid Mr. Burnell for the corn. It was received by the quartermaster on my contract, and the books of the officers at Fort Harker ought to show this fact.

5th. When I entered into the contract of November 9th, 1868, I had on hand at Fort Harker about 168,000 lbs. of grain, which I had shipped to that post in excess of the amount necessary to fill a previous contract. This grain was put in on my contract of November 9th, 1868. I have already suffered on account of delay and misunderstanding of the facts in this case, and I earnestly ask that you order this claim to be paid, for such amount as may be found to be justly due me. The amount is shown in the papers already submitted. I am now in Washington for the purpose of prosecuting this claim, and would respectfully ask the opportunity of appearing before you, or any officer of your Department, with the view of stating personally all the facts in my possession and necessary to a full consideration of all the equities of the case. I earnestly urge that you favorably consider this case, as I can not well afford to pay the large expense of prosecuting the same in the Court of Claims, where at least one-fourth of the amount would be absorbed by attorneys' fees, and payment be made only after a long delay. I am, with great respect,

Your most obedient servant,

D. H. MITCHELL.

WASHINGTON, D. C.,
414 *6th street, Feb'y* 2, '77.

To the honorable the SECT'Y OF WAR, *City:*

SIR: I have the honor to state that during the years 1868 and 1869 I delivered to the Quartermaster's Department, U. S. Army, at Fort Harker, Ks. (during the time Capt. Henry Inman, A. Q. M., was on duty at that station), a large quantity of oats

and corn. I think there is due me payment for about four hundred and fifty thousand (450,000) pounds of grain so delivered.

In the spring of 1876 I was tried at Topeka, Kansas, convicted, and fined $1,000.00 on the charge of presenting a fraudulent claim against the U. S. for a part of said grain.

Since that time I have shown by satisfactory evidence that my claim is a just one and have received from the President of the United States a pardon for the alleged offense. The papers in the case are now on file in the office of the Attorney-General of the U. S. in this city.

I would respectfully request that you will cause my claim to be thoroughly investigated at an early date, to the end that I may be paid for the grain actually furnished by me.

In this connection I would state that in receiving a payment in May, 1876, on my contract for wood furnished the Q. M. Dept. at Fort Wallace, Ks., Lieut. Col. R. Saxton, deputy-q'rm'r-gen'l at Fort Leavenworth, Ks., deducted from one of my vouchers about $1,320 for an alleged overpayment for a portion of the grain delivered by me at Fort Harker.

Of the amount of grain actually delivered by me the hon. the Sec'ty of War, in January, 1870, caused me to be paid for 400,666 pounds of corn, but at a lower rate than that agreed upon by the receiving officer at the time of its delivery. In directing such payment he stated that the matter of the price of the corn would be left open for further investigation.

Very respectfully, your ob't servant,

D. H. MITCHELL.

(Indorsed:) 980. War Dep't, 1, 1877. 185. Q'rm'r Gen.'s Office. M. C. Received Feb. 6, 1877. "Q" 133.

STATE OF KANSAS, *Leavenworth County, ss:*

Fred. Zimmerman, being duly sworn, deposes and says that he was employed in the quartermaster department at F't Harker, Kansas, from July, 1867, until the middle of November, 1868, and from the middle of December, 1868, until some time in February, 1869, and assisted in weighing and receiving the grain at said post during that time. Was acting as forage-master from October 10th, 1868, to the middle of November, of 1868, and from the middle of December, 1868, until some time in February, 1869. Gave his personal attention to the weighing and receiving grain at the forage yard at said post; that the cars containing grain averaged 24,000 lbs. in weight per car.

FRED. ZIMMERMAN.

Sworn to before me and subscribed in my presence this 5th day of December, A. D. 1876.

[SEAL.] H. P. PENDERY,
Notary Public.

(Indorsed:) In re D. H. Mitchell, N. 4. Affidavit of Fred. Zimmerman. 1039, War Dep't, 4, 1877. 2-206, Q'r M'r Gen.'s Office. Received Feb. 10, 1877. With 6-185, Q. M. G. O., 1877, and 694, 1875. With 30-621, Q. M. G. O., 1878. Cls. "Q," 134, 1876.

Report upon the claim of D. H. Mitchell.

WAR DEPARTMENT,
January 11, 1870.

Claimant asks to be paid for 400,666 pounds of corn at the rate of $1.52½ per bushel of fifty-six pounds.

Claimant on the 9th of November, 1868, at Leavenworth, Kansas, contracted with Bvt. Brig. Genl. B. C. Card, chief quartermaster Department of the Missouri, to deliver at Fort Harker, on the Kansas Pacific Railroad, within four weeks from the date of his contract, sixteen thousand bushel of oats of the best quality, in sacks. He was to receive for the same 87 cents per bushel of 32 pounds.

It appears in evidence that claimant after delivering about 3,500 bushels of oats under his contract, in lieu of the 12,500 bushels of oats which remained to be delivered, did in fact deliver an equal weight of corn, being 400,666 pounds, or about 7,100 bushels.

This change was permitted by the acting depot quartermaster, who appears to have been temporarily on duty, and the corn was in fact received and consumed.

What had been done came to the knowledge of the chief quartermaster at Fort Leavenworth, by letter of March 19th, '69, from the depot quartermaster at Fort Harker, disclosing the inconvenience occasioned at that post by want of oats.

The transaction was at once repudiated by the chief quartermaster, Gen. Easton, who directed that Mr. Mitchell be notified that the corn delivered by him would be returned to him on demand at Fort Harker, from the corn then in store, and meanwhile would be held at his risk. Gen. Easton adds that he had previously refused his assent to the delivery of corn in lieu of oats to Mr. Mitchell, and that Mr. Mitchell had, on several occasions, when he had contracts at higher prices, delivered quantities in excess of his stipulations.

Gen. Easton, however, directed that Mr. Mitchell might, if he choose, be paid at the rate of $1 $\frac{9}{100}$ per bushel for the corn he had improperly delivered.

Various communications afterwards passed between the parties without definite result, except that the corn was not returned to Mr. Mitchell.

It appears, however, from these letters that the claimant sets up that his agreement with the depot quartermaster was to receive corn pound for pound in lieu of oats, which would bring the price of a bushel of corn of 56 pounds up to $1.52½ cents, at which rate claimant asked to be paid.

Also, from an original contract now filed, that claimant on the same day that he contracted with Gen. Card to deliver oats at Fort Harker, contracted also with Gen. Card to deliver corn at Fort Hayes during the same period at $1.69 per bushel. The freight charge on corn from Fort Harker to Fort Hayes was 17½ cents per bushel, which would make the contract price at Fort Harker $1.51½ cents per bushel.

Also, from the correspondence referred to, that the rate of $1.00 per bushel was derived from a contract effected some time previously for delivery of corn at Fort Hayes at $1.18½ per bushel.

Also, that at the time claimant delivered the corn, other corn was being delivered at Fort Harker under contracts made subsequent to claimant's contract for oats, at a cost to the United States of $1.23 and $1.27 per bushel.

Also, that the corn last referred to was contracted for during a temporary reduction of rates by railroad to Fort Harker.

Also, that by reason of this difference the corn delivered by the claimant cost him $1.35 per bushel, besides his labor and personal expense.

On the 6th of January, 1869, a letter of Hon. Sidney Clarke, of Kansas, to the Secretary of War, in relation to this case, was referred to the Quartermaster-General for immediate report.

That officer returns copies of the correspondence above cited, and under all the circumstances of the case recommends that Mr. Mitchell be paid an average of the two prices which the Government was paying for corn delivered at Fort Harker at the time that Mr. M. delivered his, which would be $1.27 per bushel, but that Mr. Mitchell be first required to deliver at the contract price the oats he failed originally to deliver.

This last the claimant represents that he has done, of which there is some evidence among the papers filed.

In relation to this case it is considered:

1. That the agreement of the acting quartermaster to receive corn in lieu of oats (about the extent of which there is some doubt), was in no sense binding on the United States.

The Court of Claims have repeatedly held that the law of general and special agents is applicable to superior and inferior agents, in the matter of contracts, in their relations to the United States and the public. The special agent can not exceed the regulations of his principal, nor the inferior officer the regulations of his superior. (Stevens' case, 2nd C. Cls., 101. Emery and Blake's case, 4 C. Cls., 401.)

The above is conclusive in its application here. Claimant had made a contract at department headquarters from which he sought to depart. Railroad and telegraph communication with department headquarters were fully open. If, as he states, he omitted to use these, and accepted the consent of a subordinate, the violation of his contract was at his own risk entirely. If, as Gen. Easton states, he applied and was refused, the aspect is decidedly more serious.

2. The tender of payment at a given rate, with the alternative of receiving back the corn, and claimant's failure to demand the corn, puts any payment beyond that rate on purely equitable grounds.

In this connection claimant urges that it was habitual for contractors to make substitutions of one grain for another in deliveries, and without complaints; that bad roads made it difficult for him to bring in oats for delivery; and that he did not know that any wrong was done or that exception would be made, and that the rate of payment asked will not more than make him good.

To all which the reply would seem to be that whatever discretion may be exercised in sanctioning a variation from the written contract on account of *of* custom or the circumstances of the case can be not only better, but in view of precedent more safely exercised upon the ground by one acquainted with the facts than here. A cus-

tom such as claimant cites may have shown clearly the necessity of an example; and the inconvenience which arose in this case may have dictated its selection.

Claimant, however, states that General Easton finally consented to pay him the cost price under other contracts at the fort, and as this tallies with the view of the Quartermaster-General it is recommended that it be allowed.

On the further representation of Mr. Clarke and the contractor that this decision involves peculiar hardship, it is considered that the payment herein recommended should be without prejudice to evidence showing a right of the contractor to an increased allowance and the assent of Gen. Easton to the same.

WAGER SWAYNE,
Col., & Bvt. Maj. Gen'l, U. S. A.

Approved.
WM. W. BELKNAP,
Sec'y of War.

Respectfully referred to the Quartermaster-General, who will pay the contractor for the corn mentioned herein at one dollar and twenty-five cents per bushel.

WM. W. BELKNAP,
Secretary of War.

WAR DEPARTMENT, *January* 12, '70.

(Indorsed:) 14-1403. Q'r M'r Gen.'s Office. Received Jul. 5, 1876. B. B. 25-546. C. 11, Jan., 1870. W. D. B'k 13, W. 1458. Decision Bk. 9, page 97.

EXHIBIT W. M. P., No. 11.

ASST.——, *April* 26, 1869.

Bvt. Major-General L. C. EASTON,
Chief Qr. Mr. Dept. Mo., Fort Leavenworth, Kans.:

GENERAL: I have the honor to state, in reply to your communication of July 16, '68, that Mr. D. H. Mitchell, in delivering grain on his contract dated November 30, '67, shipped to this post upwards of 100,000 pounds of corn in excess of his contract.

A part of this grain was afterwards transferred by Mitchell to Mr. H. L. Newman, and at the commencement of hostilities last fall Mitchell had stored here, subject to his order, 54,776 pds. corn.

At that time I was ordered to ship a large quantity of grain to Fort Dodge, and not having sufficient on hand to meet the demand, the amount above stated (54,776 pds.) was used in addition to what I had on hand.

I am, general, very respectfully, your obt. servt.,

——— ———,
Bvt. Maj. & A. Q. M., U. S. A.

EXHIBIT W. M. P., No. 12.

OFFICE ASST. QR. MR.,
Fort Harker, Ks., April 29, 1869.

Bvt. Maj. Gen. L. C. EASTON,
Chief Qr. Mr. Dep. Mo., Fort Leavenworth, Ks.

GENERAL: Referring to your communication of 15 inst., I have the honor to state that the forage master at this post report that the corn received from Mr. Mitchell in lieu of oats (contract Nov. 9) was *entirely* consumed by the public animals fed here during my absence. I enclose his certificate to that effect.

I am, general, very respectfully, your obt. servt.,

HENRY INMAN,
Bvt. Maj. & A. Q. M., U. S. A.

EXHIBIT W. M. P., No. 26.

[Telegram.]

FORT LEAVENWORTH, *M'ch* 9, 1869.

Lieut. D. MCINTOSH, A. A. Q. M.,
Fort Harker:

Mitchell must finish the delivery of sixteen thousand (16,000) bushels oats under his contract of November ninth. I have informed him that the deliveries of corn he has made will not be considered as applicable to the fulfillment of his contract for oats.

L. C. EASTON,
C. Q. M.

EXHIBIT W. M. P., No. 31.

LEAVENWORTH, *Dec. 19th*, 1868.

General EASTON:

DEAR SIR: I received your notice of being behind on my contract of the 9th. I am doing everything in my power to get the contract filled, and will continue to do so until it is filled, which, I think, will be in a few days. The roads are so bad it is almost impossible to haul to the line of the railroad.

Respectfully, yours,

D. H. MITCHELL.

EXHIBIT W. M. P., No. 32.

LEAVENWORTH, *May 4th*, 1869.

Maj. General L. C. EASTON:

DEAR SIR: If you would prefer to give the corn back they used at Fort Harker, you need not pay freight on it, as I do not want it there. I will take it here, and allow me the freight I paid. General, if they had not fed the grain, I think they would not be able to show any such amount of corn. There was some parties said they would bust me up on that contract, but, general, I feel well satisfied you will do me justice in the case; if you do wish to keep the corn, you can pay me when it will suit you.

I am, very respectfully, your obedient servant,

D. H. MITCHELL.

EXHIBIT W. M. P., No. 46.

ASST. QR. MR. OFFICE,
Fort Harker, Ks., April 26, 1869.

Bvt. Maj. Gen'l L. C. EASTON,
C. Q. M. Dept. Mo., Fort Leav'th, Ks.:

GENERAL: I have the honor to state, in reply to your communication of July 16, '68, that D. H. Mitchell, in delivering grain on his contract, dated Nov. 30, '67, shipped by (?) this post upwards of 100,000 pounds of corn in excess of his contract.

A part of this grain was afterwards transferred by Mitchell to Mr. H. L. Newman, and at the commencement of hostilities last fall Mitchell had stored here, subject to his order, 54,776 ℔ corn.

At that time I was ordered to ship a large quantity of grain to Fort Dodge, and not having sufficient on hand to meet the demand, the amount above stated (54,776 ℔) was used in addition to what I had on hand.

I am, general, very respectfully, your obd't serv't,

HENRY INMAN,
Bvt. Maj. and A. Q. M., U. S. A.

Respectfully returned. Major Inman will issue a voucher to D. H. Mitchell for all the corn received by him from Mr. Mitchell in excess of the contracts of the latter, at the contract price, provided the corn was old corn, as advertised and contracted for. If it was new corn, then issue a voucher at the price of the next contract made after that of November 30, 1867. Justice to the Government demands that the date at which this surplus delivery was made by Mr. Mitchell should be taken into account in fixing the price.

In addition to a receipt for 54,776 ℔ corn, Mr. Mitchell presented at this office one for some 25,000 ℔, dated, I believe, in September, 1868. Both receipts were returned to him. Attach this (original) to the voucher issued.

L. C. EASTON,
Deputy Qr. Mr. Gen'l, C. Q. M.

MAY 3, 1879.

EXHIBIT W. M. P., No. 47.

Respectfully returned to Major Inman. The instructions in my endorsement of the 3d inst. were given under a misapprehension of the facts.

It now appears from the enclosed voucher and from his letter that Major Inman did not receive the corn until Dec'r 1, 1868, although it was stored at Fort Harker

prior to that time "subject to Mr. Mitchell's order" and I suppose for his convenience. At the time it was accepted by Major Inman, which time appears from these vouchers to have been December 1, 1868, the Government was paying for corn at Harker $1.29 per bush. (I take the price of contract made nearest to that time.) My recollection also that the receipt for the smaller quantity (517 bush.) which Mr. Mitchell exhibited here was dated September, 1868. Corn delivered at that time should not be paid for at the price prevailing in Nov'r, 1867. I wish a settlement made which will be just to the Government and to Mr. Mitchell. If the corn was not received by Major Inman until Dec. 1, 1868, and the Government was not responsible to Mr. Mitchell for it until that time, then I do not think that a rate higher than the Government was paying at that time should be allowed Mr. Mitchell.

Such complications will be avoided if in future grain delivered without authority is not received into Government buildings.

L. C. EASTON,
D. Q. M. G., C. Q. M.

MAY 12, 1869.

[Court of Claims. No. 11940. D. H. Mitchell *v.* The United States.]

The deposition of Addison Jones, for claimant, taken at Omaha, Nebr., on the 23d day of February, A. D. 1883.

Claimant's counsel, N. J. Burnham; defendants' counsel, F. H. Howe.

First general interrogatory on the part of the commissioner. State your name, age, occupation, place of residence the past year; whether you have any, and what interest in the claim in controversy, and whether you are related to the claimant.

Answer. Addison Jones; age, 38; I have charge of the freight records of the Union Pacific Railroad Company; residence, Omaha, Nebr.; I have no interest in the claim in controversy, and am not related to the claimant.

Being further interrogated by N. J. Burnham, esq., on behalf of the claimant, the witness says:

I have in my possession and under my charge as an officer of the Union Pacific Railway Company the press-letter copies and written copies of the original way-bills of certain cars of grain shipped from various points in Kansas to Fort Harker, Kans., during the fall and winter of 1868–'69 and the spring of 1869 for the account of D. H. Mitchell.

Question 1. State what the paper is I hand you.

(Objected to as incompetent, immaterial, and irrelevant.)

Answer. This is a true copy of the original way-bill number 22, from Perry, Kans., to Fort Harker, Kans., for 145 sacks of oats, Griffith & D. consignor.

(The paper is offered in evidence and hereto attached, marked Exhibit A. S. No. 1.)

(The paper offered in evidence objected to as incompetent and immaterial.)

Question 2. What are the papers I now hand you?

(Same objection.)

Answer. Forty-four copies of way-bills from various stations to Fort Harker, commencing with December 17, 1868, and ending with April 13, 1869, as follows:

Question 3. Please describe them by dates and contents.

(Same objection.)

Answer. 1st. December 17, 1868: 119 sacks oats, 20 sacks corn.
2d. December 18, 1868: 165 sacks corn.
3d. December 23, 1868: 155 sacks oats.
4th. December 23, 1868: 165 sacks shelled corn.
5th. December 24, 1868: 47 sacks oats, 94 sacks corn.
6th. December 24, 1868: 165 sacks corn.
7th. December 29, 1868: 165 sacks shelled corn.
8th. December 31, 1868: 150 sacks oats.
9th. January 5, 1869: 147 sacks oats.
10th. January 11, 1869: ——— sacks oats and 30 sacks corn.
11th. January 11, 1869: 160 sacks shelled corn, No. 4, car No. 1383.
12th. January 11, 1869: 160 sacks shelled corn, No. 5, car No. 1388.
13th. January 11, 1869: 160 sacks shelled corn, No. 3, car 1354.
14th. January 12, 1869: 165 sacks corn.
15th. January 13, 1869: 165 sacks corn.
16th. January 15, 1869: 160 sacks shelled corn, No. 6, car 1310.
17th. January 15, 1869: 160 sacks shelled corn, No. 7, car 1320.
18th. January 18, 1869: 165 sacks corn.
19th. January 19, 1869: 170 sacks corn, No. 56, car 1443.
20th. January 19, 1869: 170 sacks corn, No. 57, car 1254.

21st. January 20, 1869: 160 sacks shelled corn.
22d. January 21, 1869: 165 sacks corn.
23d. January 22, 1869: 165 sacks corn.
24th. January 23, 1869: 160 sacks shelled corn, No. 11, car 1432.
25th. January 23, 1869: 160 sacks shelled corn, No. 12, car 1315.
26th. January 25, 1869: 165 sacks corn.
27th. February 1, 1869: 165 sacks corn.
28th. February 2, 1869: 165 sacks corn.
29th. February 8, 1869: 160 sacks shelled corn.
30th. February 10, 1869: 160 sacks shelled corn.
31st. February 20, 1869: 160 sacks shelled corn.
32d. March 4, 1869: 1 car oats (150 sacks).
33d. March 6, 1869: 155 sacks oats, No. 23, car 1303.
34th. March 6, 1869: 153 sacks oats.
35th. March 6, 1869: 1 car corn, in sacks.
36th. March 6, 1869: 155 sacks oats, No. 22, car 1367.
37th. March 6, 1869: 155 sacks oats, No. 24, car 1239.
38th. March 8, 1869: 160 sacks oats.
39th. March 11, 1869: 41 sacks oats.
40th. March 17, 1869: 1 car oats, in sacks.
41st. March 18, 1869: 1 car oats, in sacks.
42d. March 23, 1869: 150 sacks oats.
43d. April 9, 1869: 145 sacks oats.
44th. April 13, 1869: 147 sacks oats.

The above papers are here offered in evidence by the complainant's counsel, and are marked respectively from A. S. No. 2 to A. S. No. 45, inclusive.

(The papers above offered in evidence are objected to by defendants' counsel as incompetent and irrelevant and immaterial.)

Question 4. Do you know that these are all the way-bills the company have of this description?

Answer. No, sir; there may be some more. But these are all I have been able to find.

Question 5. Do you know that any have been lost?

Answer. No, sir; I do not.

Question 6. What was the true measure of the contents of a car at that time?

Answer. The tariff book at that time accepted 18,000 pounds as a car-load. They often put as high as 26,000 and 29,000 pounds in a car.

Question 7. If shipments as aforesaid had not been delivered to consignee at Fort Harker, would the way-bills, copies of which are herein introduced and numbered, indicate the fact; that is, would the originals?

Answer. The originals would indicate the fact as a matter of course; also the copies, which I have in my office, of which the above are copies.

Question 8. What has become of the original way-bills?

Answer. It is reported that Fort Harker was struck by lightning, I think in 1870, and that all the original way-bills of which these are copies were destroyed by fire at that time.

Question 9. Among the way-bills handed the notary I do not find shipments of four car-loads of grain from Fort Leavenworth to Fort Harker. If any such shipments were made on account of Mitchell by General B. C. Card, would not the way-bills show that fact?

(Objected to as leading.)

Answer. They should be in my possession. In my investigations so far I have failed to find any such bills.

Question 10. What has been done with the original way-bills of which these are copies, and other way-bills of this character?

(Objected to as incompetent, irrelevant, immaterial.)

Answer. The original press or written copies way-bills were all supposed to have been sent by S. T. Smith, an official of the Kansas Pacific Road, to M. H. Goble, freight auditor of the Union Pacific Railroad, late in 1879, and were turned over to me to be filed, and since I have had them I have moved them twice. The first time I took them out of the boxes and filed them on the shelving in the general office. I had some men help me. Some may have been lost or misplaced then. These bills of November and December, 1868, January and February, 1869, did not come in their proper place, but when I received them they were in a stray box, not marked or labeled. In 1882, late in the fall, by order of Mr. Goble, I moved them from the office in Farnum street, with a lot of other records, to the shop, there to be stored. I was about three weeks in this last move, and I had several men helping me. The bills were delivered to me at the shop in very bad shape. The distance they were moved was from a half to three-quarters of a mile, I think. They were hauled in company wagons, with rubber bands and strings around them. Some had rubber bands and some had strings. The

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 251.

IMMEDIATE TRANSPORTATION OF DUTIABLE GOODS.

February 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Lind, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 105.]

San Diego, Cal., is the port of a customs-collection district, and has a harbor second only to that of San Francisco, from which it is distant nearly six hundred miles. It is the terminal point on the Pacific coast of a transcontinental line of railroad and the depot of a very considerable foreign and coastwise commerce. For the year ending June 30, 1888, two hundred and eighty-four foreign and one hundred and fifty-nine coastwise vessels entered this harbor and about that number cleared. The aggregate receipts for duties and tonnage at said port for the same year were $311,937.59.

The commerce and population are steadily growing. The passage of this bill, it is expected, will be followed by the establishment of a line of steamers to run between this port and the ports of Japan and China.

The design and purpose of this bill are to confer upon the port of San Diego the privileges of the first section of the act of 1880 in regard to the immediate transportation of foreign dutiable goods to inland points of destination, and the same is the design as to the port of Wilmington, Cal.

Wilmington, Cal., is the port of a customs-collection district and the receiving port for the city of Los Angeles, distant by rail 20 miles.

Los Angeles is the chief city of Southern California, containing a population of over 80,000.

The port of Wilmington is the Pacific coast terminal point of a transcontinental line of railroad and has a very extensive foreign and coastwise commerce.

The aggregate receipts at Wilmington for duties and tonnage for the year 1888 were $139,330.79. Seventy-four foreign and two hundred and fifty-two coastwise vessels entered and cleared at this point for the same year.

It is true of Wilmington as it is of San Diego, that the passage of the bill will lead to the establishment of a line of steamers to ply direct between the ports of southern California and the eastern parts of the Pacific.

This bill is approved by the Treasury Department, and your committee therefore recommends its passage.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 252.

PORT OF SAN ANTONIO.

February 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Lind, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 3352.]

The Committee on Commerce, to whom was referred the bill (H. R. 3352), to extend to the port of San Antonio, in the customs collection district of Saluria, in the State of Texas, the privileges of the seventh section of the act approved June 10, 1880, entitled "An act to amend the statutes in relation to immediate transportation of dutiable goods and for other purposes," submit the following report:

The city of San Antonio has a population exceeding 50,000 and is the railroad center of Southwestern Texas. Its wholesale and retail trade is very large, with shipping facilities fully equal to those presented by any city of the same size in the Union.

It has a direct and very large trade with Mexico and is connected by rail with all of the principal cities and towns in the State, and also has direct railway connections with San Francisco, Cal., and St. Louis, Mo.

Its population is rapidly increasing, and its growth in the matter of trade and commerce has been rapid and substantial. This bill has been favorably reported by the honorable Secretary of the Treasury and your committee recommend its passage.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 253.

MINNEAPOLIS, MINN., A SUBPORT OF ENTRY AND DELIVERY.

February 17, 1890.—Referred to the House Calender and ordered to be printed.

Mr. Lind, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill S. 993.]

A favorable report had been directed by this committee on H. R. No. 3720, which is identical in terms with this bill.

Minneapolis is a growing, enterprising city, now having a population exceeding 200,000, showing bank clearings for the year of 1889 of more than $240,000,000, and a wholesale jobbing trade amounting to $173,210,600. Not being a port of entry, its large import trade is seriously hampered, as is explained in a letter of the honorable Secretary of the Treasury. Commenting upon it, he says:

> Facilities are available in the public building at Minneapolis for the examination of merchandise, and the proposed measure would, in my opinion, afford relief to merchants who are now subjected to inconvenience and expense incident to the unlading of merchandise at St. Paul, its examination there, and subsequent cartage and shipment to Minneapolis.

Your committee therefore recommend the passage of the bill, and that H. R. 3720 lie on the table.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 254.

MISSOURI STATE CLAIM.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Thomas, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill S. 430.]

The committee on War Claims, to whom was referred Senate bill 430, report as follows:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Military Affairs of the present Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own and report back House bill 3714 as a substitute for Senate bill 430 and recommend its passage.

[Senate Report No. 3, Fifty-first Congress, first session.

The Committee on Military Affairs, to whom was referred Senate bill 430, have duly considered the same and make the following report:

A bill precisely similar to the present one was favorably reported by this committee and passed by the Forty-eighth, Forty-ninth, and Fiftieth Congresses, and was favorably reported in the House of Representatives, but no final action was taken in either Congress.

During the late war the State of Missouri paid, laid out, and expended large sums of money for the United States in enrolling, equipping, and provisioning militia forces to aid in suppressing the rebellion.

On April 17, 1866, Congress passed an act entitled "An act to reimburse the State of Missouri for moneys expended for the United States in enrolling, equipping, and provisioning militia forces to aid in suppressing the rebellion," approved April 17, 1866.

Under said act the United States re-imbursed and paid to the State of Missouri the sum of $7,220,827.33, and received and had filed in the Treasury Department the payrolls and vouchers showing the expenditures and their payment, in whole or in part, by said State. At the time this re-imbursement was made there were large sums due from said State, incurred and assumed by said State, but not then actually paid by the State, and consequently not re-imbursed. Afterwards said State paid the greater part of said sum, and Congress passed an act entitled "An act to authorize the Secretary of the Treasury to examine the evidence of payments made by the State of Missouri since April seventeenth, eighteen hundred and sixty-six, to the officers and privates of the militia forces of said State for military services actually performed in the suppression of the rebellion, in full concert and co-operation with the authorities of the United States, and subject to their orders, and to make report thereof to Congress," approved January 27, 1879.

Under this act the Secretary of the Treasury made the examination and reported to Congress April 24, 1882 (Ex. Doc. No. 184, H. R., Forty-seventh Congress, first session), recommending the payment to the State of Missouri of the sum of $234,594.10 on the fourth installment, as a re-imbursement to said State of expenditures so made. And said sum was duly appropriated and paid to said State.

The rolls and vouchers filed by said State, and now in the Treasury Department, show that there still remained some amounts due from and incurred by said State which had not been paid by said State at the date of the last adjustment by the Treasury Department, on April 22, 1882, and which were consequently not reimbursed to said State.

On March 22, 1883, the general assembly of the State of Missouri passed an act entitled "An act to provide for the payment of certain claims against this State for military services rendered during the late civil war, as shown by the pay-rolls delivered to the General Goverment by the Stevenson Commission in January, 1867, and for the collection of any money thus expended from the Government of the United States, and to appropriate money therefor," approved March 22, 1883. Under this law any person holding a claim against the State of Missouri for military service during the late war, which claim appears on the "record of unpaid claims" in the office of the adjutant-general of Missouri, "as well as on the pay-rolls of Missouri military organizations, now on file in the Treasury Department of the United States," and which claim has not been paid by the State or audited by the State military commission created under authority of the law of March 19, 1874, was authorized to file the same in the office of the adjutant-general of the State within nine months from the date of said act, and if not so presented to be forever barred. The nine months have elapsed, and all such claims have been presented or are now barred.

In adjusting such claims the adjutant-general of Missouri was required "to apply to the Third Auditor of the Treasury Department of the United States for a statement of the exact amount, if anything, shown by the pay-rolls on file in said Department to be due to said claimant after deducting all proper payments and stoppages appearing on said rolls or the records of said Department," before auditing or allowing any such claim.

The adjutant-general of Missouri has audited the claims so presented, and the State now seeks re-imbursement of the amounts so audited and paid. This bill directs the Secretary of the Treasury to examine such claims for such payments by the State since April 22, 1882, and to report the result of such examination to Congress for its further action.

In the Forty-eighth Congress the Committee on Military Affairs received from the Treasury Department the following communications upon said similar bill:

TREASURY DEPARTMENT,
January 23, 1884.

SIR: I have the honor to acknowledge the receipt of your letter of the 12th instant, inclosing, for consideration, copy of bill (S.940) "to authorize the Secretary of the Treasury to cause to be examined certain vouchers filed or to be filed by the State of Missouri, or her agent or agents, for sums claimed to be due from the Government of the United States on account of payments made by said State since April 22, 1882, to the officers and enlisted men of her militia forces for military services rendered to the United States in the suppression of the rebellion, as evidenced by the proper pay-rolls heretofore filed with, examined, and accepted by the Government of the United States, and to report to Congress."

In reply I inclose herewith copy of a report in the matter, dated the 19th instant, from the Second Comptroller of the Treasury, to whom your letter with its inclosure has been referred.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

Hon. F. M. COCKRELL,
U. S. Senate.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
Washington, D. C., January 19, 1884.

SIR: In compliance with your direction of the 15th instant, I have the honor to report in relation to Senate bill 940, herewith inclosed, that the act of April 17, 1866 (14 Stat., p. 38), created a commission to examine and report upon claims of the State of Missouri similar to the claims mentioned in the inclosed Senate bill.

The committee reported, claims embraced in the report were audited and payment made, and the act was held to be no longer operative.

An act was passed January 27, 1879 (20 Stat., 266), authorizing the presentation of similar claims paid by the State of Missouri subsequent to April 17, 1866, directly to the Treasury Department, and claims thus presented have been audited and payment made in pursuance of a report of the Third Auditor and Second Comptroller, which was transmitted to the Secretary of the Treasury on April 22 1882; and it is the

opinion of the accounting officers that there is now no authority for payment of claims which the State may have assumed and paid subsequent to the transmission of that report, namely, April 22, 1892.

No reason is seen why the inclosed bill, No. 940, is not in proper form to authorize payment of all claims therein mentioned which have been paid by th State since the date last mentioned.

Of course the word "of," in line 12, should be omitted.

The papers referred are herewith returned.

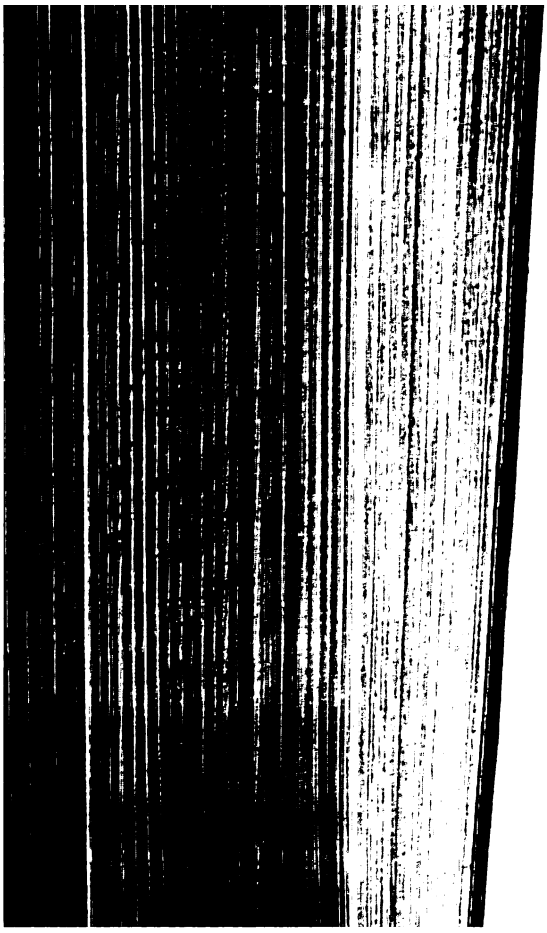
Very respectfully,

W W. UPTON,
Comptroller.

Hon. CHAS. J. FOLGER,
Secretary of the Treasury

The amount claimed to have been paid out by the State of Missouri to be now reimbursed is about $1,000.

Upon these facts your committee report the bill back to the Senate and recommend its passage.



51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 255.

BRIDGE ACROSS CANE RIVER, LOUISIANA.

February 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Wilkinson, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 400.]

The Committee on Commerce, to whom was referred the bill (H. R. 400) for the construction of a bridge over the Cane River in Louisiana, having considered the same, report as follows:

That the said bridge would be a great convenience to the section of country where it is proposed to construct it, and would not interfere with the navigation of the Cane River. The people of the town of Natchitoches and vicinity have memorialized Congress to grant permission for the construction of the bridge and no opposition appears from any quarter.

Your committee, therefore, report the bill back with the recommendation that it do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 256.

NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY.

February 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Smith, of Illinois, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 260.]

The Committee on Claims, to whom was referred the bill (H. R. 3375) entitled "An act for the relief of the New York, Lake Erie and Western Railroad Company," have had the same under consideration and report as follows:

A bill identical with said House bill was introduced into the Senate at the present session and passed that body and was referred to this committee.

This committee recommend the substitution of the said Senate bill for the said House bill, and recommend the passage of the Senate bill.

The report of the said Senate committee, a copy of which is hereunto attached, is hereby adopted as the report of this committee.

[Senate Report No. 10, Fifty-first Congress, first session.]

The Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 260) for the relief of the New York, Lake Erie and Western Railroad Company, report that at the last session of the Fiftieth Congress a bill precisely similar to the bill under consideration was unanimously passed by the Senate upon a favorable report made by Mr. Colquitt from this committee. The Committee on Claims of the House of Representatives also made a unanimously favorable report through Mr. Shaw, of that committee.

Your committee therefore adopt the Senate report made at the last session, and also that made by the Committee on Claims of the House of Representatives (the latter containing a communication from Hon. Don M. Dickinson, then Postmaster-General, in which the questions are clearly stated), and recommend the passage of the bill

The following are the reports above referred to:

SENATE REPORT.

The Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 779) for the relief of the New York, Lake Erie and Western Railroad Company, report:

That the committee, after examination of the papers submitted by the Postmaster-General and the New York, Lake Erie and Western Railroad Company, find that there are controverted questions of law and fact which may, in justice to the Department and the company, be submitted to judicial investigation and determination. For the pending bill the committee recommend as a substitute a bill to authorize the Court of Claims to take jurisdiction of and adjust the claim of the New York, Lake Erie and Western Railroad Company.

HOUSE REPORT.

The Committee on Claims, to whom was referred the bill (S. 779) for the relief of the New York, Lake Erie and Western Railroad Company, report:

That this claim is based upon alleged contracts by and between the United States of America, acting in that behalf by their Postmaster-General, and the president of the Erie Railway Company, for the transportation of mail matter upon the routes mentioned in the bill upon which this report is made.

Your committee coincides with the views of the Senate Committee on Post-Offices and Post-Roads, as expressed in their report on this claim: "That it involves controverted questions of law and fact which may, in justice to the Department and the company, be submitted to judicial investigation and determination."

These questions are so well stated in a recent communication from the Postmaster-General to Senator McPherson that your committee hereto append it, and recommend the passage of the bill:

POST-OFFICE DEPARTMENT,
Washington, D. C., December 8, 1888.

SENATOR: I have the honor to acknowledge receipt of your communication of the 6th instant, inclosing a copy of Senate bill No. 779 as amended, "for the relief of the New York, Lake Erie and Western Railroad Company," with accompanying report of the Senate Committee on Post-Offices and Post-Roads.

The bill, as amended, merely authorizes the Court of Claims to take jurisdiction of the claim, notwithstanding its bar by the statute of limitations. I have carefully examined all the papers bearing on this matter on the files of the Department, and the rulings of the officials of this Department bearing upon the claim.

The claim, as presented here, was based upon alleged contracts between the United States and the said company, alleged to have been signed and acknowledged by John A. J. Creswell, Postmaster-General, and by the company on January 10, 1874, and on April 20, 1874, respectively. The decision of the Department was that there were no such contracts, and this necessarily disposed of every other question on the merits, or on the law, within the jurisdiction of the Department. This conclusion was reached, as I understand it, not on the ground that the contracts were not executed as a matter of fact, but that as a matter of law they could not be considered contracts because the following provisions of statute law were not complied with:

"R. S., SEC. 402. Every, order, entry, or memorandum whatever, on which any action is to be based, allowance made, or money paid, and every contract, paper, or obligation made by or with the Post-Office Department, shall have its true date affixed to it; and every paper relating to contracts or allowances filed in the Department shall have the date when it was filed indorsed upon it.

"R. S., SEC. 404. The Postmaster-General shall deliver to the Sixth Auditor, within sixty days after the making of any contract for carrying the mail, a duplicate thereof."

I am inclined to think that a violation of all or any one of these provisions by officials of the Department could not affect the validity or binding force upon the Government of any contract otherwise duly executed, and that these provisions are mere specifications of duties to be performed by the Government's own officers, upon the compliance or non-compliance with which no third party's rights could hang.

It would seem absurd that any one negotiating with the Government and obtaining a contract should not only be obliged to see to it that it was executed according to law by both parties, but that it should also be incumbent upon him to follow up the Postmaster-General and the clerks of the Department until the technical and clerical duties of filing, of entries in the proper books, and of furnishing copies to the proper officials were fully complete and ended. At all events, I think this claimant should have an opportunity to present the question to the Court of Claims, to establish, if it can, that binding contracts *were* made, that it performed the service, and that it did not receive compensation. On none of these questions do I assume to express an opinion.

In order that the whole question as to the execution and validity of the contracts may be passed upon, I suggest that the inclosed amended bill be further amended by the insertion of the word "alleged" before "contracts," as otherwise it may be claimed that the legislation intended to foreclose that question.

I hand you herewith a copy of the opinion of the Assistant Attorney-General of this Department on the same subject.

I have the honor to be, your obedient servant,

DON M. DICKINSON,
Postmaster-General.

Senator MCPHERSON,
United States Senate.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 257.

JOHN D. PRATOR.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3581.]

The Committee on Pensions, to whom was referred the bill (H. R. 3581) granting a pension to John D. Prator, have considered the same and report as follows:

The claimant served as J. D. Prator in Capt. C. W. Allen's company, Colonel Thomas Beall's first regiment Georgia Mounted Volunteers, Indian War, from June 3, 1836, to July 22, 1836, and was paid for two months and twelve days' service.

He asks a pension at the same rate as is allowed by law for service in the war of 1812.

The claimant is seventy-seven years old and unable, on account of his infirmities, to earn a support at his trade as a carpenter. He has no income and is dependent upon his friends and relatives for support. These facts are vouched for by Mr. McRae, a Representative in Congress from the State of Arkansas.

In view of the facts stated herein, your committee recommend that the bill do pass.

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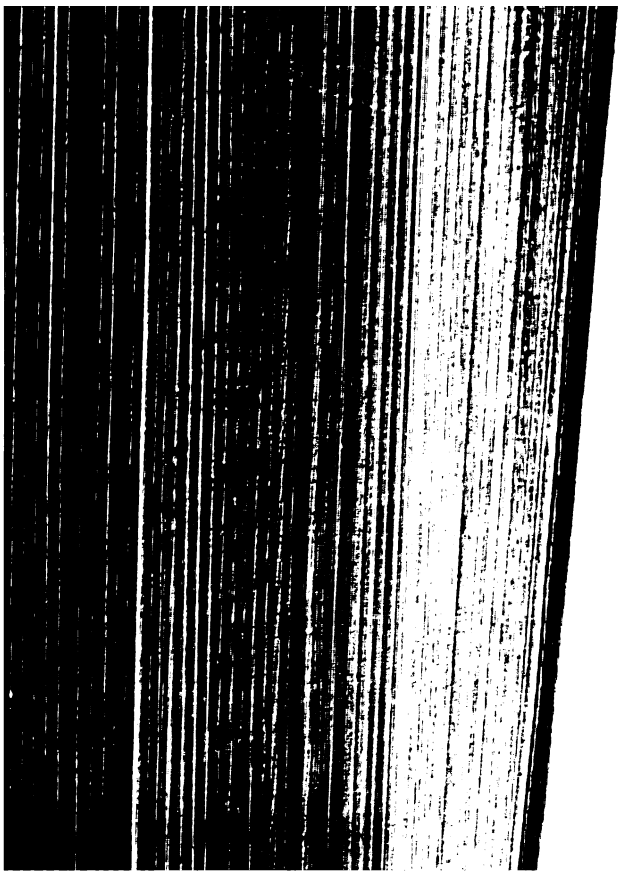

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 259.

SAMUEL WYRICK.

FEBRUARY 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

MR. DE LANO, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3583.]

The Committee on Pensions, to whom was referred the bill (H. R. 3583) granting a pension to Samuel Wyrick, have considered the same and report:

The claimant was a private in Capt. Darrell Smith's company, Col. R. Goodwyn's regiment of Georgia Mounted Volunteers, from February 17, 1836, to May 6, 1836. This service was in the Indian war then under way. The claimant asks a pension at the same rate as is allowed by law for service in the war of 1812.

The claimant is seventy-nine years old, very feeble, and very much in want, and has a large helpless family. These facts are vouched for by Mr. McRae, the gentleman who introduced the bill in the House.

The committee, believing that this class of applications for relief by Congressional enactment is a meritorious one, respectfully recommend the passage of the bill.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 260.

MARY J. MANN.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany H. R. 3588.]

The Committee on Pensions, to whom was referred the bill (H. R. 3588) granting a pension to Mary J. Mann, have considered the same and beg leave to submit the following report:

The claimant's late husband, John W. Mann, is shown by the records of the Second Auditor's Office, Treasury Department, to have been enrolled June 9, 1836, in Capt. John S. Richbourg's company, Alabama Militia, Creek Indian war, to serve three months, and mustered out with the company July 28, 1836.

Mr. McRae, a Representative in Congress from the State of Arkansas, states that the claimant is quite old and feeble, and entirely dependent upon relatives for support. She asks a pension at the same rate as is allowed by law to the widows of the soldiers of the war of 1812.

There are numerous precedents for this legislation, and your committee recommend that the bill do pass.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 261.

MARGARET Z. AUSTIN.

February 17, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany H. R. 5862.]

The Committee on Pensions, to whom was referred the bill (H. R. 5862) granting a pension to Margaret Z. Austin, have considered the same and beg leave to report:

Said bill is identical with House bill 9400 of the Fiftieth Congress, which was reported favorably to the House in Report No. 2279, first session, and your committee adopt that report as applicable to this bill and recommend that the relief prayed for be granted.

[House Report No. 2279, Fiftieth Congress, first session.]

The Committee on Pensions, to whom was referred the bill (H. R. 9400) granting a pension to Margaret Z. Austin, have considered the same and report as follows:

The claim comes to your committee upon the reference and recommendation of the Commissioner of Pensions, as shown by the following letters:

Department of the Interior, Pension Office,
Washington, D. C., April 14, 1888.

Sir: I have the honor to transmit herwith the papers in the claim for pension of Margaret Z. Austin, widow of Thomas Austin, late of the U. S. Navy, original No. 4479.

The case was erroneously referred to the Committee on Invalid Pensions, House of Representatives, returned, and is now submitted to your committee for its consideration.

The facts in the case are fully set forth in the accompanying letter addressed to the honorable Secretary of the Interior.

Very respectfully,

John C. Black,
Commissioner.

Hon. Archibald M. Bliss,
Chairman Committee on Pensions, House of Representatives.

[Pension claim No. 4479, Margaret Z. Austin, widow of Thomas Austin, yeoman U. S. S. *Fulton*.]

Department of the Interior, Pension Office,
Washington, D. C., January 12, 1888.

Sir: I have the honor to submit herewith the papers in the pension claim above indicated, for transmittal through your office to the chairman of the Committee on Invalid Pensions, House of Representatives, that the attention of Congress may be invited to the facts in the case for such action in the premises, under the provisions of joint resolution approved May 29, 1830, as that honorable body may deem just and proper.

This claim, based upon the theory that the fatal disease, "angina pectoris, w the result of the injury for which sailor was pensioned, viz, fracture of both legs a loss of all the toes and metatarsal bones of left foot," was rejected upon the grou that the claim was inadmissible under sections 4728 and 4729, Revised Statutes, clai ant's husband not having died in service, and all his service was rendered prior March 4, 1861.

The above-named sections of Revised Statutes provide for pensioning sailors injur in service, and their widows, when husband died while in service.

It is believed that this is a case wherein relief should be sought at the hands Congress, this Bureau being unable under the law to admit the case.

Very respectfully,

JOHN C. BLACK,
Commissioner.

The SECRETARY OF THE INTERIOR.

Your committee have also examined the evidence filed in the claim, which show beyond a reasonable doubt that the soldier died July 3, 1886, from the effects of h severe injuries, contracted in the military service of the United States; that his wi had been a constant attendant upon him during all the years after his injury wa incurred, devoting all her time to his comfort, and that she is left at the age of sixty six years without means and without ability to earn a living for herself. Her clai is rejected by the Pension Bureau solely because of the insufficiency of the gener law to cover her case, the soldier having contracted his injuries during a period o peace, prior to March 4, 1861.

Your committee recommend that the bill do pass.

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ONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
Session. } { No. 262.

NUMENT TO VICTIMS OF PRISON-SHIPS AT FORT GREENE, BROOKLYN.

ARY 17, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

PINOLA, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3887.]

Committee on Military Affairs, to whom was referred the bill . 3887) for the erection and completion of a monument to the mem- the victims of the prison-ships at Fort Greene, Brooklyn, N. Y., pectfully report:

en General Washington was compelled to retire with the Amer- Army after the disastrous battle of Long Island, August 17, 1776, ritish anchored several vessels which had been used to transport and other supplies, in Wallabout Bay, and in them imprisoned ptives taken during the remainder of the Revolution. There were these ships, the most notorious being the *Old Jersey*, or "Hell," was euphemistically called by those who suffered the torments damned in that floating Golgotha.

horrors of these ships are too revolting for description. Pesti- and starvation reigned supreme. American patriots, confined in ess, subjected to the most horrible brutality in the annals of the tian era, packed together between decks, fed upon the condemned rom the British fleet, frequently driven to scoop up the slops from oughs of the pig-pens on the decks above them, dying of suffoca- rom the foul air in summer, and freezing to death in winter, their rs ghoulishly awaiting their last breath, and often tying the ex- martyrs in the winding sheets before their souls had gone to their Maker—such were the daily occurrences on those vessels, our forefathers were struggling for independence.

ese prisoners were not criminals, but gallant American sailors and rs. It is almost incredible that such barbarities should have perpetrated, as undoubted testimony establishes in the history of mes.

m the gross abuse which they received and the thousands of s which occurred, the dreadful conviction is forced upon us, as it upon them, that the system of maltreatment, degradation, and ery was desired to kill them off or drive them to enlist in the h service. But history discloses the fact that but one man became tor to the cause.

eir torturers continually implored them collectively and individ- to desert their principles, offering every inducement and making le threats to compel them to take up arms against their country,

but without avail. By every cunning artifice, were they offered refuge from death, by joining the King's forces. One historian notes that when they had spurned these overtures, the commandant told them to go to their dungeons and rot, assured that the poor rations to be allowed to their wives and children should not be issued, and that their dying consolation might be that their families were starving.

One ship, the *Transport*, was burned with three hundred prisoners in her hold, few escaping this dreadful death.

It was a common occurrence, when the prisoners in the ships were assembled at the hatchways in summer trying to get a breath of fresh air, the reeking filth of their dungeons being intolerable, for sentinels to thrust their bayoneted guns down among the gathering, and in the morning numerous bodies mortally pierced through the head and shoulders would be picked up at the spot.

These atrocities were brought to the attention of the Continental Congress, which resulted in the adoption of resolutions of remonstrance against these cold-blooded outrages. In pursuance to the resolutions General Washington wrote to the commandants of the ships calling attention to the horrors, and begging that the war be conducted with regard to the laws of humanity. These protests were unheeded, but the violence and carnage continued with all its dastardly vigor.

The bodies of the martyrs to the cause of our country's liberty were buried in shallow trenches scraped in the sands of the nearest shore, where is now the site of the United States navy-yard. For several years after the war the bones were strewn along the beach until in 1808 when they were gathered and properly buried. They now rest in thirteen enormous coffins, typifying the original States.

For three quarters of a century their resting place has been the scene of patriotic meetings. The anniversary of American Independence is always celebrated before their sepulcher with civic and military displays.

Petitions in favor of the bill signed by 30,000 citizens of the United States, resolutions of the legislature of the State of New York, of the Kings County board of supervisors, and of the Brooklyn board of aldermen have been presented to this committee, and a memorial of the society of old Brooklynites who have chiefly been instrumental in preserving these relics, has been considered.

The precise number of victims of the prison ships is unknown, but according to a publication April 25, 1783, 11,644 died from barbarous treatment on the *Old Jersey* alone, and it is conservatively estimated that, including all the ships, no less than 20,000 succumbed. Congress is asked to appropriate the trifling sum of less than $10 to the memory of each of these victims of the dungeons.

Congress gave them sympathetic consideration while they lived, and Congress should show regard for their courage, virtue, and love of country now.

The bones were bequeathed to the United States Government by Benjamin Romaine, who collected them and it is our duty to take care of them.

Your committee therefore recommend that the bill be amended as follows:

In line 7 of the printed bill strike out the words "victims of the" and insert as follows: "Eleven thousand five hundred patriots who perished while confined on board of," and passed.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 263.

ANACOSTIA RAILWAY.

February 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Atkinson, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill H. R. 5190.]

The object of the bill is to provide better street car facilities for the people of southeast Washington, now wholly unprovided, and a more direct route to the Congressional Cemetery for the people of Anacostia, the Government Hospital for the Insane, the German Orphan Asylum, and others.

It involves the extension of the line on Eleventh street southeast, a wide street, for a distance of four squares to the company's line on "G" street, southeast.

The Commissioners of the District of Columbia say to the committee as follows:

Office of the Commissioners, District of Columbia,
Washington, February 4, 1890.

Sir: The Commissioners have the honor to report that they favor H. R. bill 5190 (to amend the act and approval of Congress to the route and termini of the Anacostia and Potomac River Railroad, etc.), referred to them by your committee.

Respectfully,

J. W. Douglass,
President Board of Commissioners District of Columbia.

Hon. Wm. W. Grout,
Chairman Committee on the District Columbia.

The committee have well considered the bill and believe its passage will be a benefit and accommodation to the public as well as a means toward financial improvement of the company.

The committee recommend that the bill do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 264.

GEORGETOWN AND TENALLYTOWN RAILWAY COMPANY.

FEBRUARY 17, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. ATKINSON, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill H. R. 3297.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 3297) to amend an act incorporating the Georgetown and Tennallytown Railway Company, respectfully report that they have had the bill under careful consideration, and are of opinion that the bill should pass.

The object of this bill is to carry out the original purpose of the incorporation of this company which was incorporated on August 10, 1888, and is necessary before the road can be completed. The said road has been begun and about 1½ miles thereof is finished and contracts are out for cars and other necessary equipment. Nearly $100,000 has been expended and the contracts on hand will call for an outlay in excess of this.

The District Commissioners, to whom this bill was referred at the last session, approved the same, and upon the strength of such approval in connection with the merits of the case, the House committee of the last session reported the bill favorably and the House of Representatives passed the same.

Your committee suggest that the bill be amended as follows: After the word "road" in the eighth line of the bill, add the following words: "but outside the paved or improved limits thereof."

As thus amended, your committee recommend that the bill do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 265.

PENSION APPROPRIATION BILL.

February 18, 1890.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. Morrow, from the Committee on Appropriations, submitted the following

REPORT:

[To accompany bill H. R. 7160.]

The Committee on Appropriations, in presenting the bill making appropriations for the payment of invalid and other pensions for the fiscal year 1891, submit the following in explanation thereof:

The estimates on which the bill is based will be found on page 143 of the Book of Estimates for 1891, amounting to $98,587,252.

The accompanying bill appropriates $98,427,461, apportioned as follows:

For the payment of pensions	$97,090,761
For fees and expenses of examining surgeons	1,000,000
For salaries of agents	72,000
For clerk hire	220,000
For fuel	750
For lights	750
For stationery and other necessary expenses	25,000
For rents	18,200
	98,427,461

The sum of $220,000 is provided for the expense of clerk hire, being an increase of $42,000, in order to secure greater efficiency in the payment of pensions in the various agencies. The Commissioner has submitted a statement, which will be found in the appendix, explaining the necessity for this increase of appropriation.

An estimate was submitted for two additional agencies to relieve the excess of business now being transacted at Columbus, Ohio; Chicago, Ill.; Indianapolis, Ind., and Topeka, Kans. It was determined, however, that the increase allowed in the clerical force, with the authority conferred upon a clerk to act for the pension agent in certain contingencies, would probably relieve the difficulty of inadequate service at any point. The following provision is therefore incorporated in the bill:

In case of the sickness or unavoidable absence of any pension agent from his office he may, with the approval of the Secretary of the Interior, authorize the chief clerk, or some other clerk employed therein, to act in his place, to sign official checks and to discharge all the other duties required by law of such pension agent. And, with like approval, any pension agent may designate and authorize a clerk to sign the name of the pension agent to official checks. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases. Such acting officer shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct, in like cases, of the pension agent for whom he acts.

On page 2, in line 17, of the bill, the word "hereafter" is inserted, in order to avoid the possible necessity of repeating in every annual appropriation bill for pensions the provision which was inserted for the first time in the act for 1890.

The following statement gives, by appropriate title of expenditure, the amounts appropriated for 1890, the estimates for 1891, and the amounts recommended in the accompanying bill for 1891:

Title of expenditure.	Appropriated, 1890.	Estimated, 1891.	Recommended, 1891.
Payment of pensions	a $80, 473, 000	b $97, 210, 252	$97, 090, 761
Fees of examining surgeons	1, 000, 000	1, 000, 000	1, 000, 000
Salaries of agents	72, 000	80, 000	72, 000
Clerk-hire at agencies	c 178, 000	250, 000	220, 000
Fuel	750	1, 000	750
Lights	750	1, 000	750
Stationery and other necessary expenses	16, 000	25, 000	25, 000
Rent	18, 200	20, 000	18, 200
Total	81, 758, 700	98, 587, 252	98, 427, 461

a It is estimated there will be a deficiency in this appropriation of $21,598,834 for 1890 (see House Ex. Doc. 174, page 30).

b This estimate was revised by the Pension Office and reduced to $97,090,761 (see page 7, appendix to this report).

c A deficiency of $7,200 is asked for in this appropriation for 1890 (see House Ex. Doc. 174, page 30).

Number of pensioners on the roll, annual value of pensions, and disbursements on account of pensions, 1879 *to* 1889, *inclusive.*

Fiscal years.	Number of pensioners on the roll.	Annual value of pensions.	Disbursements on account of pensions as reported by the Treasury.
1879	242, 755	$25, 493, 742. 15	$35, 121, 482. 39
1880	250, 802	25, 917, 906. 60	56, 777, 174. 44
1881	268, 830	28, 769, 967. 46	30, 659, 279. 62
1882	285, 697	29, 341, 101. 62	61, 345, 193. 95
1883	303, 658	32, 245, 192. 43	66, 012, 573. 64
1884	322, 756	34, 456, 600. 35	55, 429, 228. 66
1885	345, 125	38, 090, 985. 28	56, 102, 267. 49
1886	365, 788	44, 708, 027. 44	63, 404, 864. 63
1887	406, 007	52, 824, 641. 22	73, 496, 482. 60
1888	452, 557	56, 707, 220. 92	80, 288, 508. 77
1889	489, 725	64, 246, 552. 36	87, 624, 779. 11

On page 15 of the annual report of the Commissioner of Pensions for 1889 a tabulated statement is made of the pensioners on the roll June 30 last, showing the number resulting from the late war, the war of 1812, and the war with Mexico.

REFERENCES.

Navy pension fund.—Section 4755 of the Revised Statutes provides that Navy pensions shall be paid out of the "Navy pension fund," upon an appropriation by Congress, so far as the same may be sufficient.

The naval pension fund at present amounts to $14,000,000, bearing interest at the rate of 3 per cent. per annum, and is created under the provisions of sections 4751 and 4752 of the Revised Statutes.

The payments on account of Navy pensions during the fiscal year 1889 aggregated $1,669,153.26.

Pension agents.—The compensation of pension agents is fixed by the act of June 14, 1878 (Supplement to the Revised Statutes, pp. 347 and

348), by the act of July 4, 1888, and by the act of March 3, 1885 (Statutes at Large, vol. 23, pp. 99 and 362).

Examining surgeons.—The compensation of examining surgeons is fixed at $2 for each examination by section 4 of the act of July 25, 1882 (Statutes at Large, vol. 22, pp. 175 and 176).

Laws authorizing appointment of agents for payment of pensions and fixing their compensation.

[Revised Statutes, section 4780.]

The President is authorized to establish agencies for the payment of pensions wherever, in his judgment, the public interests and the convenience of the pensioners require; but the number of pension agencies in any State or Territory shall in no case be increased hereafter so as to exceed three, and no such agency shall be established in addition to those now existing in any State or Territory in which the whole amount of pensions paid during the fiscal year next preceding shall not have exceeded the sum of $500,000.

[Act March 3, 1885, Statutes at Large, vol. 23, page 362.]

That from and after June thirtieth, eighteen hundred and eighty-five, the salary and emoluments of agents for the payment of pensions shall be four thousand dollars, and no more, per annum; and of the fees provided by law for vouchers prepared and paid, only so much thereof as may be required for expenses incurred in having said vouchers prepared, as well as the necessary clerical work at the agencies, shall be available.

In the appendix to this report will be found a carefully prepared statement, made by the Pension Office, explaining in detail the estimates as submitted for 1891 and other valuable information bearing upon the subject-matter of the accompanying bill.

APPENDIX.

ESTIMATES ARMY AND NAVY PENSIONS.

ESTIMATE OF APPROPRIATIONS REQUIRED FOR THE PAYMENT OF ARMY AND NAVY PENSIONS FOR THE FISCAL YEAR ENDING JUNE 30, 1891, BASED UPON EXPENDITURES FOR THE YEARS 1887, 1888, AND 1889.

June 30, 1889:		
Pensioners on rolls, 489,725	489,725 × $131.18 + = $64,246,552	
Average annual value of each pension, $131.18 + ...		
June 30, 1887:		
Pensioners on rolls, 406,007	406,007 × $130.10 + = $52,824,641	
Average annual value of each pension, $130.10 + ...		
June 30, 1888:		
Pensioners on rolls, 452,557	452,557 × $125.30 + = 56,707,221	
Average annual value of each pension, $125.30 + ...		
Three years ending June 30, 1889:		
Average number on rolls, 449,430	449,430 × $128.86 = 57,913,550	
Average value of each pension, $128.86		
Pensioners that will probably be dropped from rolls during the year ending June 30, 1890, 17,862 × $131.18 + ...		2,343,137
Leaving 471,863 pensioners		61,903,415

NOTE.—The pensioners (17,862) to be dropped during 1890 is determined by a proportion. The number of pensioners on the rolls at the beginning of 1889 (452,557) is to the number on the rolls at the beginning of 1890 (489,725) as the number dropped during 1889 (16,507) is to the number to be dropped during 1890 (17,862):

452,557 : 489,725 : 16,507 : 17,862.

Pensioners that will probably be dropped from the rolls during the year ending June 30, 1891, 17,211.		
Average half-year pension 17,211 × $65.59		1,128,869
		60,774,546

NOTE.—Of the 489,725 pensioners on the rolls July 1, 1889, 17,862 will be dropped during 1890. Of said number there will remain July 1, 1890, 471,863. By the same proportion it will be shown that of said remainder (471,863) 17,211 will be dropped during 1891. Of the 51,921 new cases added during 1890–'91 (on the same basis) will be dropped during 1891. (See further along.

During year ending June 30, 1887:		
Pensioners dropped from the rolls, 17,677	17,677 × $132.46 = $2,341,600	
Average annual value of each, $132.46		
During year ending June 30, 1888:		
Pensioners dropped from the rolls, 15,730	15,730 × $182.89 = 2,876,985	
Average annual value of each, $182.89		
During year ending June 30, 1889:		
Pensioners dropped from the rolls, 16 507	16,507 × $142.50 = 2,352,250	
Average annual value of each, $142.50		
During the year ending June 30, 1889:		
Average number dropped f om rolls each year, 16,638...	16,638 × $152.62 = 2,539,292	
Average annual value of each pension dropped, $152.62..		
Pensioners that will probably be added to the rolls during the year ending June 30, 1890, 51,921 × $131.18		$6,810,997
Pensioners that will probably be dropped from such added list during the year ending June 30, 1891, 1,893.		
Average half-year pension, $65.59 × 1,893		124,162
		6,686,835
During the year ending June 30, 1887:		
Pensioners added to the rolls, 55,194	55,194 × $95.80 = 5,287,695	
Average annual value of each, $95.80		
During year ending June 30, 1888:		
Pensioners added to the rolls, 60,252	60,252 × $95.89 = 5,777,741	
Average annual value of each, $95.89		
During the year ending June 30, 1889:		
Pensioners added to the rolls, 51,921	51,921 × $107.44 = 5,578,490	
Average annual value of each, $107.44		
During the three years ending June 30, 1889:		
Average number added to rolls, 55,789	58,789 × $99.71 = 5,562,721	
Average annual value of each pension, $99.71		
Pensioners that will probably be restored to the rolls during the year ending June 30, 1890, 1,898 × $131.18		248,980

NOTE.—The number of pensioners on the rolls at the beginning of 188 is to the number of pensioners at the beginning of 1890 as the number of pensioners restored during 1889 is to the number to be restored during 1890:

452,557: 489,725: 1,754: 1,898.

Pensioners that will probably be restored to the rolls during the year ending June 30, 1891, 2,037.
Average 1½ year pension, $196.77 × 2,037 ..... $400,[illegible]

NOTE.—By the proportion used to determine the number of pensioners to be restored during 1890, it will be shown that 2,037 will probably be restored during 1891:

452,557: 525,682: 1,754: 2,037.

Pensioners July 1, 1889	489,725
New cases to be added during 1890	51,921
	541,646
To be dropped during 1890	17,862
	523,784
To be restored during 1890	1,898
Probable number of pensioners July 1, 1890	525,682
Probable number to be added during fiscal year 1891	51,921
Total	577,603
Probable number to be dropped during 1891	17,211
	560,392
Probable number to be restored during 1891	2,037
Probable number of pensioners July 1, 1891	562,429

During year ending June 30, 1887:
Pensioners restored, 2,707
Average annual value of each, $77.22 } 2,707 × $77.22 = $209,042
During year ending June 30, 1888:
Pensioners restored, 2,028
Average annual value of each, $75.72 } 2,028 × $75.72 = 153,565
During year ending June 30, 1889:
Pensioners restored, 1,754
Average annual value of each, $87.84 } 1,754 × $87.84 = 154,087
Pensioners restored during the three years ending June 30, 1889, 6,489, value..... 516,694
Average number restored each year, 2,163
Average annual value of each, $79.62 } 2,163 × $79.62 = 172,231

New pensioners who will probably be placed on the rolls during year ending June 30, 1891:
First payments, 51,921
Average value of each first payment, $442 } 51,921 × $442 ..... 22,949,[illegible]
During year ending June 30, 1887:
First payments due (paid and unpaid) 58,702
Average value of each of such payments, $495.75 } 58,702 × $495.75 = 29,091,773
During year ending June 30, 1888:
First payments due (paid and unpaid) 70,856
Average value of each of such payments, $349.51 } 70,856 × $349.51 = 24,765,328
During year ending June 30, 1889:
First payments due (paid and unpaid) 56,234
Average value of each of such payments, $480.26 } 56,234 × $480.26 = 22,365,706
During the three years ending June 30, 1889:
First payments due (paid and unpaid), 182,792.
Total amount due (paid and unpaid), $80,864,720.
Average number due (paid and unpaid), 60,931.
Average amount of each payment, $442.
Average amount of each annual payment, $26,954,907.

Half-year pensions to 51,921 new pensioners, being average of year, 51,921 × $65.59 3,405,498

Settlements by Third Auditor of the Treasury under section 4718 R. S., for last sickness and burial of pensioners who die without heirs, and without assets sufficient to meet such expense (see also act of March 1, 1889, 25 Stats. at Large, page 782), 2,500 claims at $50 each 125,000

Claims settled under sec. 4718, R. S., during year ending June 30, 1887:
Number, 2,495
Average amount of each, $45.69 } 2,495 × $45.69 = $113,997
Claims settled under sec. 4718, R. S., during year ending June 30, 1888:
Number, 2,328
Average amount of each, $55.88 } 2,328 × $55.88 = 130,089
Claims settled under sec. 4718, R. S., during year ending June 30, 1889:
Number, 2,206
Average amount of each, $50.76 } 2,206 × $50.76 = 111,976
Claims settled under sec. 4718, R. S., during year ending June 30, 1889:
Number, 7,029.
Total amount paid, $356,052.
Average claims settled for each year, 2,343
Average amount of each, $50.65 } 2,343 × $50.65 = 118,673

During year ending June 30, 1891, pensions probably increased 50,000 claims at $50 each... 2,500,000
During year ending June 30, 1887:
Pensions increased 32,107
Average annual increase to each, $90.71 } 32,107 × $90.71 = $2,912,591

During year ending June 30, 1888:
Pensions increased 45,716 ..... } 45,716 × $49.68 = $2,271,445
Average annual increase to each, $49.68 .....
During year ending June 30, 1889:
Pensions increased, 71,198 ..... } 71,198 × $59.41 = 4,229,794
Average annual increase to each, $59.41.....
During the three years ending June 30, 1889:
Pensions increased, 149,021.
Amount of increase, $9,413,830.
Average increased, 49,674..... } 49,674 × $63.17 = 3,137,907
Average annual increase to each, $63.17.....
Total estimate for amount required to pay pensions for the year ending June 30, 1891.. $97,090,761

ORIGINAL PENSION CLAIMS PENDING, FILED, ADMITTED, AND REJECTED DURING THE THREE YEARS ENDING JUNE 30, 1889.

Year ending June 30—	Pending.	On rejected files.	Total pending and on rejected files.	Filed.	Admitted.	Annual value admitted.	Rejected.	Disposed of.
1887.....	265, 259	144, 477	409, 736	72, 476	55, 194	$5, 287, 695	11, 892	67, 086
1888.....	233, 768	191, 442	425, 210	75, 726	60, 252	5, 777, 741	46, 965	107, 227
1889.....	243, 920	210, 589	454, 509	81, 220	51, 921	5, 578, 490	19, 147	71, 068

INCREASE PENSION CLAIMS PENDING, FILED, ADMITTED, AND REJECTED AND PENSIONS RESTORED DURING THE THREE YEARS ENDING JUNE 30, 1889.

Year ending June 30—	Pending.	Filed.	Admitted.	Annual value admitted.	Rejected.	Disposed of.	Pensioners restored.	Annual value of pensions restored.
1887.....	109, 095	107, 851	32, 107	$2, 912, 591	32, 342	64, 449	2, 707	$209 042
1888.....	180, 680	148, 276	45, 716	2, 271, 445	31, 115	76, 831	2, 028	153, 565
1889.....	235, 088	163, 020	71, 080	4, 229, 794	37, 532	108, 612	1, 754	154, 087

A.—AMOUNT OF DISBURSEMENTS OF ARMY AND NAVY PENSIONS EACH QUARTER FROM JULY 1, 1886, TO JUNE 30, 1888.

	Army pensions.	Navy pensions.	Total.
1887.			
First quarter ending September 30, 1886.....	$16, 987, 333. 13	$252, 306. 62	$17, 239, 639. 75
Second quarter ending December 31, 1886	17, 495, 416. 54	281, 443. 80	17, 776, 860. 34
Total first six months	34, 482, 749. 67	533, 750. 42	35, 016, 500. 09
Third quarter ending March 31, 1887	17, 923, 797. 12	281, 555. 57	18, 205, 352. 69
Fourth quarter ending June 30, 1887	19, 868, 182. 03	301, 998. 35	20, 170, 180. 38
Total last six months.....	37, 791, 979. 15	583, 553. 92	38, 375, 533. 07
Grand total	72, 274, 728. 82	1, 117, 304. 34	73, 392, 033. 16
1888.			
First quarter ending September 30, 1887	19, 429, 820. 27	274, 582. 17	19, 704, 402. 44
Second quarter ending December 31, 1887.....	17, 249, 097. 96	319, 127. 87	17, 568, 225. 83
Total first six months.....	36, 678, 918. 23	593, 710. 04	37, 272, 628. 27
Third quarter ending March 31, 1888	18, 272, 027. 45	297, 739. 98	18, 569, 767. 43
Fourth quarter ending June 30, 1888.....	20, 175, 680. 78	293, 958. 61	20, 469, 639. 39
Total last six months	38, 447, 708. 23	591, 698. 59	39, 039, 406. 82
Grand total.....	75, 126, 626. 46	1, 185, 408. 63	76, 312, 035. 09

B.—AMOUNT OF DISBURSEMENTS OF ARMY AND NAVY PENSIONS EACH QUARTER FROM JULY 1, 1888, TO DECEMBER 31, 1889.

	Army pensions.	Navy pensions.	Total.
1889.			
First quarter ending September 30, 1888	$20, 353, 131. 94	$407, 023. 59	$20, 760, 155. 53
Second quarter ending December 31, 1888	22, 601, 249. 42	428, 476. 95	23, 029, 726. 37
Total first six months	42, 954, 381. 36	835, 500. 54	43, 789, 881. 90
Third quarter ending March 31, 1889	22, 132, 338. 99	397, 149. 25	22, 529, 488. 24
Fourth quarter ending June 30, 1889	21, 504, 723. 95	436, 503. 47	21, 941, 227. 42
Total last six months	43, 637, 062. 94	833, 652. 72	44, 470, 715. 66
Grand total	86, 591, 444. 30	1, 669, 153. 26	88, 260, 597. 56
1890.			
First quarter ending September 30, 1889	28, 525, 120. 21	495, 851. 94	29, 020, 972. 15
Second quarter ending December 31, 1889	23, 625, 886. 84	416, 193. 74	24, 042, 080. 58
Total first six months	52, 151, 007. 05	912, 045. 68	53, 063, 052. 73

ACTS OF CONGRESS INCREASING PENSIONS FOR THE YEARS 1887, 1888, AND 1889 OVER PREVIOUS YEARS.

ACT MARCH 19, 1886.

Act of March 19, 1886 (24 Statutes at Large, page 5), increased the pension of widows, minors, and dependent relatives of soldiers from $8 to $12 per month. The act increased the pensions of 79,989 widows, minors, and dependent relatives then on the rolls in the annual value of $4,160,132.

1887.

It is shown that the number (85,630) of late war widows and others on the rolls June 30, 1888 (the report for which year for the first time gives such information), at the rate of $12 per month, was 92 per cent. of the whole number (92,965) of such pensioners. The number of those at $12 on the rolls June 30, 1889 (91,900), was also 92 per cent of the whole number (99,856) of that class.

Applying that percentage to the allowance of claims during 1887 it is found that during that year of the 11,217 cases of widows and others allowed 10,320 were favorably affected by the act of March 19, 1886. Ninety-two per cent. of those (127) restored to the rolls during the same period, making 117, were similarly affected by said act.

Ten thousand four hundred and thirty-seven late war cases, allowed during 1887, were thus affected by the said act, and the whole number (231) of war of 1812 widows were also benefited, making a total of 10,668 cases.

The increase granted by said act was $48 per annum:

$$10,668 \times \$48 = \$512,064.$$

During 1887 6,401 late war widows and others were dropped from the rolls and 92 per cent. thereof, or 5,889, was probably the number of widows at $12 per month. Add to these the whole number (1,800) of war of 1812 widows dropped during 1887 and there was a total of 7,689 widows and others, pensioned at $12 per month, dropped, saving to the Government the amount, at $48 per annum each,

$$7,689 \times \$48 = \$369,072.$$

New cases allowed in 1887	$512,064
Dropped cases	369,072
Net additional cost	142,992

1888.

During the fiscal year 1888 10,816 late war widows and others were allowed. Assuming, as shown in the statement for 1887, that 92 per cent. of these were widows and others at $12 per month, 9,951 of such cases were affected by the act of March

19, 1886. Of the 121 widows and others restored 111 were affected, and the whole number (251) war of 1812 widows were also benefited.

There was therefore a total of 10,313 persons benefited by said act during the year 1888:

$$10,313 \times \$48 = \$495,024.$$

During the fiscal year 1888 4,955 late war widows and others were dropped from the rolls and 92 per cent. of them or 4,559, were probably receiving $12 per month. Adding to these the number of war of 1812 widows (1,295) dropped during the same period it will appear that 5,854 persons, receiving $12 per month, were dropped, saving the amount at $48 per annum each,

$$5,854 \times \$48 = \$280,992.$$

New cases allowed in 1888	$495,024
Dropped cases	280,992
Net additional cost	214,032

1889.

During 1889 11,924 late war widows were allowed; 92 per cent. of that number (making 10,970) were probably affected by the act of March 19, 1886; 92 per cent. of the number (127) restored (making 117) were also similarly affected, and the whole number (181) of war of 1812 widows were benefited by said act.

Eleven thousand two hundred and sixty-eight persons were thus affected during 1889:

$$11,268 \times \$48 = \$540,864.$$

During the fiscal year 1889 5,163 late war widows and other were dropped from the rolls. Of these, 92 per cent., or 4,750, were probably receiving $12 per month. Adding to these the whole number (1,005) of war of 1812 widows dropped during the same period, and it will be seen that 5,755 persons receiving $12 per month, were dropped during 1888, at a saving, so far as the act of March 19, 1886, is concerned, of $48 per annum each:

$$5,755 \times \$48 = \$276,240.$$

New cases allowed in 1889	$540,864
Dropped cases in 1889	276,240
Net additional annual value	264,624

RECAPITULATION.

Increase in annual values on account of act of March 19, 1886:		
Increased to June 30, 1886		$4,160,132
New cases allowed in 1887	$512,064	
Dropped cases in 1887	369,072	
Net additional annual value		142,992
Increased annual value in 1877		4,303,124
New cases allowed in 1888	$495,024	
Dropped cases in 1888	280,992	
Net additional annual value		214,032
Increased annual value in 1888		4,517,156
New cases allowed in 1889	$540,864	
Dropped cases in 1889	276,240	
Net additional annual value		264,624
Increased annual value in 1889		4,781,780

ACT AUGUST 4, 1886.

Act of August 4, 1886 (24 Statutes at Large, page 220), increased the pensions of soldiers and sailors who had lost arms or legs, hands or feet, or were totally disabled in the same from $24 to $30, and from $24 and $30 to $36, and from $30 and $37.50 to $45. During the fiscal year 1887 said act increased 10,209 cases at an estimated cost of $1,003,545.

This estimate is based upon the cost of the allowance made under this act during the first five months of the fiscal year 1887. In said period 3,679 cases were increased to $30 per month. These were previously on the rolls at $24 per month, and the net additional annual value to them was $72 each, or $264,888. Three thousand six hundred and seventy-four cases were increased to $36 per month. This number embraced both $24 cases and $30 cases, and it is believed from the experience of the Pension Bureau that two thirds of the number were increased from $30 and one-third from $24. Two thirds of the number, or 2,449, increased from $30 per month to $36, resulted in a net additional cost of $72 per annum each, or $176,328. One-third of the number, or 1,225, increased from $24 to $36 per month, resulted in a net additional annual cost of $144 each, or $176,400; a total cost of the $36 pensioners of $352,728.

Of those increased to $45, 1,338 were increased from $30 per month absolutely, making a net additional annual cost of $180 each, or $240,840. Five hundred cases were increased from $37.50 to $45, an additional annual value of $90 in each case, or $45,000 in all.

Cost of 9,191 *cases allowed under act of August* 4, 1886.

Rate.	Number.	Additional cost.
$30	3,679	$264,888
$36	3,674	352,728
$45	1,338	240,840
$45	500	45,000
Total	9,191	903,456

This makes an average additional annual cost of $98.30 in each case, and therefore the 10,200 cases allowed during 1887 it is estimated cost the Government the additional annual amount of $1,003,545.

Accepting this average cost per case as applicable to the allowances made in the two subsequent years, it is found that during the fiscal year 1888, 1,815 cases were favorably affected by said act; this number, representing the net addition to the roll at said rates, after deducting all cases at these rates which were dropped during the year. This made a net additional annual cost of $178,414.

During 1889, 872 cases was the net additional number after deducting all at said rates dropped during the year which were affected by this act, and the total additional annual cost to the Government was $85,718.

RECAPITULATION.

Total additional cost in 1887	$1,003,545
Cost of net addition to roll in 1888	178,414
Total additional cost in 1888	1,181,959
Cost of net addition to roll in 1889	85,718
Total additional cost in 1889	1,267,677

ACT JANUARY 29, 1887.

Act of January 29, 1887 (24 Statutes at Large, page 371), granted pensions to the survivors and widows of those who served in the war with Mexico at $8 per month.

Amount paid for pensions to such survivors and widows.

Year ending June 30—	Survivors.		Widows.		Total disbursements.	
	Pensioners June 30.	Pensions paid during the year.	Pensioners June 30.	Pensions paid during the year.	Pensioners June 30.	Total pensions paid during the year.
1887	7,503	$53,148.68	895	$2,458.08	8,398	$55,606.76
1888	16,060	1,861,756.07	5,104	583,056.28	21,164	2,444,812.35
1889	17,065	1,796,899.30	6,206	693,572.45	23,271	2,490,471.75
Total		3,711,804.05		1,279,086.81		4,990,890.86

ACT JUNE 7, 1888.

Act of June 7, 1888 (25 Statutes at Large, page 173), granted arrears of pensions to widows to date from death of husband.

Total number arrears cases under this act issued during the year ending June 30, 1889, 15,008; total amount paid thereon, $4,489,395.94.

ACT AUGUST 27, 1888.

The act of August 27, 1888, passed during the fiscal year 1889 (25 Statutes at Large, page 449), increased the rate of pension for total deafness from $13 to $30 per month, and granted proportions of the latter rate for different minor degrees of deafness. At said date, as nearly as can now be determined, there were 2,698 cases of total and partial deafness on the pension rolls. These were increased at an actual additional monthly cost of $22,593.64, or an additional annual cost of $271,124.

ACT FEBRUARY 12, 1889.

The act of Congress, approved February 12, 1889, granted increase from $72 to $100 per month to soldiers and sailors who had lost both hands. Just twenty persons were favorably affected by this act, at an annual additional cost of $336 each, or a total of $6,720.

SPECIAL ACTS.

Special acts passed in 1887, 1888, 1889, and net additional cost per annum resulting therefrom.

An examination of the Statutes at Large, volumes 24 and 25, shows that during the fiscal year ending June 30, 1887, 398 special acts were passed by Congress. The average annual value of each pension during that year was $130.10. This would make the annual value of pensions granted by special act in that year $51,780.

The statutes also show that during the fiscal year 1888, 269 special acts were passed by Congress, and as the annual average value of each pension during that year was $125.30, the passage of these acts resulted in an additional annual value of $33,826.

During 1889, 739 special acts were passed by Congress, and the average annual value during that year being $131.18 in each case, the passage of said acts resulted in an additional annual value of $96,942.

RECAPITULATION OF NET ADDITIONAL ANNUAL COST OF ACTS OF CONGRESS AFFECTING PENSIONS, PASSED BETWEEN MARCH 19, 1886, AND JUNE 30, 1889.

Acts approved.	1887.	1888.	1889.
March 19, 1886	$4,303,124.00	$4,517,156.00	$4,781,780.00
August 4, 1886	1,003,545.00	1,181,951.00	1,267,677.00
January 29, 1887*	*55,606.76	*2,031,744.00	*2,234,016.00
June 7, 1888†			†4,489,395.94
August 27, 1888			271,124.00
February 12, 1889			6,720.00
Special acts	51,780.00	33,826.00	96,942.00
Total	5,414,055.76	7,764,677.00	13,147,654.94

* These figures show the net additional annual cost of the act of January 29, 1887, while those stated in the body of this estimate represent the total amount paid to this class each year.

† This was the total amount paid during 1889 on account of the arrears act of June 7, 1888.

EXAMINING SURGEONS AND BOARDS.

NUMBER OF EXAMINING SURGEONS AND BOARDS, JANUARY 29, 1890.

Eight hundred and seventy-nine boards of examining surgeons, consisting of, members	2,587
Number of single examining surgeons	436
Total number of examining surgeons	3,023

CLERK-HIRE.

ESTIMATES FOR 1891.

The amounts heretofore appropriated by Congress for the necessary clerk-hire at the several United States pension agencies have always been insufficient for that purpose, though the fact must be conceded that such appropriations have been made pursuant to estimates which originated in the Pension Bureau.

Up to the fiscal year 1886 the necessary clerical work at the agencies was paid for under the system known as "fees on vouchers." The act of March 3, 1885, making appropriations for the payment of pensions during the fiscal year 1886 practically abolished this system by providing that "of the fees provided by law for vouchers prepared and paid, only so much should be available as was required for expenses incurred in having said vouchers prepared, as well as the necessary clerical work at the agencies."

The subsequent acts made specific appropriations for clerk-hire, and "fees on vouchers" disappeared.

It is interesting to note that for the pension agency service for the fiscal year 1886 Congress appropriated the sum of $256,000 for all the expenses of the agencies except the salaries of the pension agents. At the beginning of said year there were on the rolls a total of 345,125 pensioners of all classes; while for the fiscal year 1890, at the beginning of which there were on the rolls a total of 489,725 pensioners of all classes, Congress appropriated for the same purposes $213,700. That is to say, the amount to pay pensioners in 1890 is $42,300 less than the amount to pay them in 1886, while the pension-roll has increased during said time 144,600.

Comparative statement of number of pensioners and cost of agency service July 1, 1885, *and July* 1, 1889.

	Number of pensioners.	Amount appropriated for agency expenses.
July 1, 1885	345,125	$256,000
July 1, 1889	489,725	213,700
Increase in number of pensioners	144,600	
Decrease in agency expenses		42,300

Numerous and unceasing complaints have come to this Bureau from all the pension agents, ever since the system was changed, of the insufficiency of the amount appropriated for clerk-hire, and it has been made to appear that as a result of the small appropriations for this purpose the clerks at the various pension agencies with average salaries greatly less than the average paid in the Government Departments in this city have become about the hardest worked and most poorly remunerated employés of the Government. Care has been taken to gather together a large number of complaints which at different times have been made by the pension agents on this subject, and they will be duly submitted.

A much more interesting comparison may be instituted when we consider the cost of the agency service during the fiscal year 1877, at the close of which the number of pension agencies was reduced to eighteen. During the fiscal year 1877 there were fifty-eight agents for the payment of pensions, and the official records show that for the payments during that year to 232,104 pensioners of all classes the Government was required to spend the sum of $433,805.63 in salaries to agents and "fees on voucher," while for the same objects for the fiscal year 1890 only $266,000 have been appropriated, in spite of the fact that the pension roll has increased from 232,104 in the former year to 489,725, which is the condition of the roll at the commencement of the fiscal year 1890.

It will be seen that to pay each pensioner in 1877 cost the Government $1.87 per annum, while for the fiscal year 1890 the cost to the Government will not be quite 54 cents. Attention is especially invited to this fact in connection with the further fact that with an increase between 1877 and 1890 of 257,621 pensioners to the rolls, and an increase in disbursements during the same period from $28,000,000, to $88,000,000, the cost of paying this largely increased number of pensioners, and of disbursing this additional sum per annum of $60,000,000, has decreased from $433,805.63 to $266,000.

It is manifest that if it required the former sum to make payments of pensions in 1877 the amount available for 1890 is grossly insufficient for the purpose.

It is believed to be an entirely safe assertion that the present pension agency system, even with the additional clerical force, which it is the object of this memorandum

to secure, will be the most economical system in force under the Government, and will perform the vast amount of work required of it with the same celerity, and accuracy that now distinguish it, without requiring that the clerks shall be poorly paid, or that they shall work from early morning to midnight, which they now do to sustain the reputation which the service has justly acquired, and without any sufficient payment for such extra work.

For the fiscal year 1890 the sum of $178,000 is appropriated for clerk hire alone, and the act approved March 1, 1889, making this appropriation, provided that the amount should be apportioned as nearly as practicable in proportion to the number of pensioners paid at each agency. This permits the expenditure of 36.2 cents per annum in clerk hire for the payment of each of the 489,725 pensioners on the rolls on the 1st day of July last. If we include the salaries of agents and the contingent expenses, for which $72,000 and $16,000 were respectively appropriated by the said act, the cost of paying each pensioner during 1890 will be not quite 54 cents, which is $1.33 less than it cost to pay each pensioner during 1877, and 31 cents less than it cost to pay each pensioner during the fiscal year 1886, at the beginning of which year the present system first went into effect, and at which time the number of pensioners was 144,600 fewer than at the beginning of 1890.

Comparative statement of number of pensioners and cost of service in 1877 and 1890.

	Number of pensioners.	Agency expenses.	Total disbursements for pensions.	Cost of paying each pensioner.
1877	232,104	$433,805.63	$28,000,000.00	$1.87
1890	489,725	266,000.00	88,000,000.00	.53

Increase in number of pensioners	257,621
Decrease in cost of agency service	$167,805.63
Decrease in cost of paying each pensioner	$1.34

Upon a basis of $178,000 appropriated for clerk hire for 1890, the average salary of each of the 228 clerks employed at the various pension agencies is only $780 per annum, or $65 per month, which is nearly $500 less per annum than the average salary paid to the clerks of the classified service in the Pension Bureau, and with very much longer hours of work, and with the necessity for greater celerity and accuracy in the working force.

It may not be improper in this connection to mention the fact that an official statement furnished to the Commissioner of Pensions August 3, 1889, by the Paymaster-General of the Army, shows that during the fiscal year ending June 30, 1888, the Pay Department of the Army disbursed $14,461,702.99, and that to do so cost the Government $202,176.98. During 1889 the pension agents disbursed a sum in excess of $88,000,000, at a cost to the Government of $264,424.34. It thus costs the Pay Department of the Army 1 cent and 4 mills to disburse each dollar, while it costs the pension agents less than 3 mills to disburse $1.

Comparative statement of disbursements and cost thereof by the Pay Department of the U. S. Army and by the United States pension agents in 1888.

	Pay department.	Pension agents.
Amount disbursed	$14,461,702.99	$88,000,000.00
Cost of disbursement	202,176.98	264,424.34
Cost to disburse each dollar	.014	.002

For the payment of clerk hire at the various pension agencies during the fiscal year 1891 there should be appropriated by Congress the sum of $250,000. No smaller sum is believed to be sufficient for the proper payment of these clerks. It is the intention in the proper place to ask for an additional sum of $8,000 for the salaries of two new pension agents, and it is also intended to ask for $25,000 for contingent expenses, both for the fiscal year 1891. Should these amounts be granted by Congress, the sum to be appropriated for these three items will amount to $350,000. It has been stated in the proper place in this memorandum that at the beginning of 1891 there will be a total of 524,725 pensioners, and the amount before given will only make the cost of paying each pensioner 67.6 cents per annum, instead of 85 cents, the cost in 1886, and instead of $1.87, the cost in 1877.

NUMBER, ETC., CLERKS, 1887–1890.

Memorandum showing the number of clerks employed and the salaries paid to them at each of the eighteen pension agencies, during the fiscal years 1887, 1888, *and* 1889, *and during the first half of the fiscal year* 1890.

AUGUSTA AGENCY.

During 1887 there were employed at this agency 2 clerks at $900, 1 clerk at $420, and 2 clerks at $360 each; also temporary clerks for different short periods, varying in number from 2 to 10, who were paid at the rate of $1 per day.

During 1888 there were employed at this agency 2 clerks at $900, 2 clerks at $420, and from 3 to 9 temporary clerks for different short periods at the rate of $1 per day.

During 1889 there were employed at this agency 2 clerks at $900 and subsequently at the rate of $1,000 per annum, 2 clerks at from $420 to $480 per annum, and 3 clerks at from $360 to $400 per annum each; also temporary clerks, varying from 1 to 10 in number, for different short periods at the rate of $1 per day.

During the first six months of 1890 there were employed at this agency 2 clerks at $1,000, 2 clerks at $600, and 3 clerks at $480 each. There were also employed temporary clerks, varying in number from 1 to 6, for different short periods of said six months at the rate of $1 per day.

BOSTON AGENCY.

During 1887 there were employed at this agency 1 clerk at $1,800, 1 clerk at $1,200 2 clerks at $1,000, 4 clerks at $600, and 5 clerks at $500 each.

During 1888 there were 1 clerk at $2,000, 1 clerk at $1,500, 2 clerks at $1,000, 4 clerks at $600, and 5 clerks at $500 each.

During 1889 there were 1 clerk at $2,000, 1 clerk at $1,500, 2 clerks at $1,000, 1 clerk at $700, 3 clerks at $600, 5 clerks at $500, and 1 clerk at $400 each.

During the first six months of 1890 there were employed 1 clerk at $2,000, 1 clerk at $1,500, 2 clerks at $1,000, 1 clerk at $700, 3 clerks at $600, 4 clerks at $500, and 1 clerk at $360 each.

BUFFALO AGENCY.

During 1887 there were employed at this agency, which was then located at Syracuse, N. Y., 1 clerk at $1,700, 2 clerks at $1,200, 1 clerk at $900, and 3 clerks at $600 each; also from 1 to 29 temporary clerks at the rate of from $1 to $3 per day.

During 1888 there were 1 clerk at $1,700, 1 clerk at $1,200, 1 clerk at $1,000, 3 clerks at $800, 1 clerk at $720, and 1 clerk at $600; also temporary clerks, 4 to 29 in number, at the rate of from $1 to $2.50 per day.

During 1889 there were 1 clerk at $2,000, 2 clerks at $1,000, and 7 clerks at $600; also from 1 to 21 temporary clerks at the rate of from $1 to $2.50 per day.

During the first six months of 1890 there were 1 clerk at $2,000, 2 clerks at $1,000, 8 clerks at $660, and 1 clerk at $600; also from 1 to 5 temporary clerks at the rate of from $1.50 to $2 per day.

CHICAGO AGENCY.

During 1887 there were employed at this agency 1 clerk at $2,500, 1 clerk at $1,080, 1 clerk at $1,000, 1 clerk at $900, 2 clerks at $720, 2 clerks at $672, 2 clerks at $624, 1 clerk at $576, 1 clerk at $520, 3 clerks at $480, and 5 clerks at $384; also, from 3 to 10 temporary clerks at the rate of $1.33 per day.

During 1888 there were 1 clerk at $2,500, 3 clerks at $1,080, 1 clerk at $900, 2 clerks at $720, 1 clerk at $672, 1 clerk at $648, 1 clerk at $576, 1 clerk at $528, 4 clerks at $480, and 6 clerks at $384 each; also, from 5 to 11 temporary clerks at the rate of from $1 to $1.33 per day.

During 1889 there were 1 clerk at $2,500, 2 clerks at $1,080, 1 clerk at $900, subsequently at the rate of $840 per annum, 1 clerk at $780, 3 clerks at $720, 1 clerk at $672, 1 clerk at $648, 1 clerk at $624, 1 clerk at $576, 2 clerks at $528, 2 clerks at $504, 2 clerks at $480, and 2 clerks at $384; also, from 3 to 11 temporary clerks at the rate of from $1 to $2 per day.

During the first six months of 1890 there were 1 clerk at $2,500, 2 clerks at $1,080, 1 clerk at $840, 1 clerk at $780, 3 clerks at $720, 1 clerk at $624, 2 clerks at $576, 4 clerks at $528, 1 clerk at $432, 1 clerk at $480, and 3 clerks at $384 each.

COLUMBUS AGENCY.

During 1887 there were employed at this agency 2 clerks at $1,300, 4 clerks at $1,090, 2 clerks at $720, and 14 clerks at $480 each; also, from 1 to 16 temporary clerks at the rate of from $1.25 to $2.50 per day.

During 1888 there were 2 clerks at $1,300, 4 clerks at $1,140, 1 clerk at $7.80, 1 clerk at $720, 12 clerks at $510, and 2 clerks at $480 each.

During 1889 there were 2 clerks varying from $1,380 to $1,560, 3 clerks varying from $1,140 to $1,320, 3 clerks varying from $720 to $990, 12 clerks varying from $510 to $540, and 4 clerks varying from $360 to $480 each; also, from 2 to 21 temporary clerks at the rate of from $1.10 to $2.50 per day.

During the first six months of 1890 there were 2 clerks from $1,320 to $1,680, 1 clerk from $1,200 to $1,440, 2 clerks from $1,020 to $1,200, 3 clerks from $840 to $960, 13 clerks from $420 to $516, and 3 clerks from $360 to $420; also, from 2 to 12 temporary clerks at the rate of from $1.35 to $2 per day.

CONCORD AGENCY.

During 1887 there were employed at this agency 1 clerk from $1,320 to $1,500, 1 clerk from $900 to $1,200, 2 clerks at $600, 1 clerk at $480, and 2 clerks at $360; also from 1 to 7 temporary clerks at the rate of from $1 to $2.50 per day.

During 1888 there were 1 clerk at $1,320, 1 clerk at $1,200, 2 clerks at $600, and 4 clerks at from $360 to $480 per annum.

During 1889 there were 1 clerk at from $1,320 to $1,500, 1 clerk at $1,200, 2 clerks at $600, and 4 clerks at from $420 to $540 per annum.

During the first six months of 1890 there were 1 clerk at from $1,500 to $1,600, 1 clerk from $1,260 to $1,300, 1 clerk from $660 to $720, and 4 clerks from $510 to $540 per annum.

DES MOINES AGENCY.

During 1887 there were employed at this agency 1 clerk at $1,800, 1 clerk from $780 to $1,200, 3 clerks at $600, 5 clerks at $480 each.

During 1888 there were 1 clerk at $1,800, 1 clerk at $780, 2 clerks at $600, and 6 clerks at $480 each.

During 1889 there were 1 clerk at $1,800, 1 clerk from $840 to $900, 2 clerks from $660 to $720, 3 clerks at $540, 5 clerks at $480; also, 2 temporary clerks at the rate of $1.50 per day.

During the first six months of 1890 there were 1 clerk at $2,000, 1 clerk at $1,000, 1 clerk at $780, 1 clerk at $720, 1 clerk at $660, 1 clerk at $600, 3 clerks at $540, and 5 clerks at $480 each; also, from 1 to 6 temporary clerks at from $1.50 to $3 per day.

DETROIT AGENCY.

During 1887 there were employed at this agency 1 clerk at $840, 2 clerks at $780, 2 clerks at $720, and 4 clerks at $600 each; also, from 1 to 3 temporary clerks at the rate of $2 per day.

During 1888 there were 1 clerk from $840 to $900, 2 clerks from $780 to $840, 3 clerks at $720, and 4 clerks at $600 each.

During 1889 there were 1 clerk at $1,020, 1 clerk at $960, 2 clerks at $900, 1 clerk at $720, and 5 clerks at $600 each.

During the first six months of 1890 there were 1 clerk at $1,260, 1 clerk at $1,080, 1 clerk at $1,020, 1 clerk at $954, 1 clerk at $780, 2 clerks at $660, 3 clerks at $600, and 1 clerk at $480.

INDIANAPOLIS AGENCY.

During 1887 there were employed at this agency 1 clerk from $1,200 to $1,500, 1 clerk from $960 to $1,200, 2 clerks from $936 to $1,080, 5 clerks from $870 to $918, and 3 clerks from $700 to $870; also, 21 temporary clerks at the rate of from $1.50 to $3 per day.

During 1888 there were 1 clerk at $1,260, 1 clerk at $1,100, 6 clerks at $1,000, 2 clerks at $950, and 2 clerks at $900 each; also from 2 to 19 temporary clerks at the rate of from $1.25 to $3 per day.

During 1889 there were 1 clerk at $1,500, 1 clerk at $1,100, 6 clerks at $1,000, 1 clerk at $950, 3 clerks at $900, 1 clerk at $840, 3 clerks at $780, and 4 clerks at $720 each; also, from 16 to 25 temporary clerks at the rate of from $2.50 to $3 per day.

During the first six months of 1890 there were 1 clerk at from $1,478 to $1,500, 1 clerk from $1,078 to $1,100, 4 clerks from $978 to $1,000, 6 clerks from $900 to $960, 1 clerk from $840 to $900, and 4 clerks from $300 to $840 each; also, from 6 to 23 temporary clerks at the rate of from $2.50 to $3 per day.

KNOXVILLE AGENCY.

During 1887 there were employed at this agency 1 clerk at from $1,200 to $1,500, 1 clerk at $1,200, 1 clerk at $900, 2 clerks at $720, and 3 clerks at $600 each.

During 1888 there were 1 clerk at $1,500, 1 clerk at $1,200, 1 clerk at $900, 3 clerks at $720, 3 clerks at $600, and one clerk at $480; also, from 2 to 8 temporary clerks at the rate of from 75 cents to $3.33⅓ per day.

During 1889 there were 1 clerk at $1,500, 1 clerk at $900, 3 clerks at $720, and 5 clerks at $600 each; also, from 2 to 5 temporary clerks at the rate of from $1 to $3.33½ per day.

During the first six months of 1890 there were one clerk at $1,500, 1 clerk at $900, 3 clerks at $720, 1 clerk at $600, 4 clerks at $540, and 1 clerk at $360; also, from 1 to 3 temporary clerks at the rate of from $1 to $3 per day.

LOUISVILLE AGENCY.

During 1887 there were employed at this agency 1 clerk at $1,200, 1 clerk at $900, and 4 clerks at $420 each; also, from 1 to 3 temporary clerks at the rate of from $2 to $3 per day.

During 1888 there were 1 clerk at $1,004, 2 clerks at $480, 2 clerks at $420, and 3 clerks at $300 each; also, from 1 to 3 temporary clerks at the rate of $3 per day.

During 1889 there were 1 clerk at $1,200, 3 clerks at $480, 2 clerks at $420, and 3 clerks at $300 each.

During the first six months of 1890 there were 1 clerk at $1,200, 1 clerk at $600, 2 clerks at $480, and 6 clerks at $360 each.

MILWAUKEE AGENCY.

During 1887 there were employed at this agency 1 clerk at $1,500, 3 clerks at $1,000, and 4 clerks at $600 each; also, 4 temporary clerks at the rate of $1.50 per day

During 1888 there were 1 clerk at $1,500, 3 clerks at $1,000, and 4 clerks at $600; also, 5 temporary clerks at the rate of $1.50 per day.

During 1889 there were 1 clerk at $1,500, 3 clerks at $1,000, 4 clerks at $600; also, 6 temporary clerks at the rate of $1.50 per day.

During the first six months of 1890 there were 1 clerk at $1,500, 1 clerk at $1,200, 1 clerk at $1,080, 2 clerks at $800, and 4 clerks at $600; also, from 3 to 7 temporary clerks at the rate of from $1.50 to $2.50 per day.

NEW YORK AGENCY.

An examination of the accounts submitted by the pension agent at this agency shows that no yearly or monthly salaries have been paid. The clerks have been paid only for the actual time employed, at rates as follows:

During 1887 there were from 7 to 12 permanent clerks employed at the rate of from 75 cents to $4 per day, and from 2 to 19 temporary clerks employed at the rate of from $1.25 to $2.50 per day.

During 1888 there were from 9 to 12 permanent clerks employed at the rate of from 75 cents to $4 per day, and from 1 to 22 temporary clerks at the rate of from $1 to $3 per day.

During 1889 there were 11 permanent clerks employed at the rate of from $1 to $4 per day, and from 17 to 21 temporary clerks at the rate of from $1 to $3 per day.

During the first six months of 1890 there were from 10 to 15 permanent clerks employed at the rate of from $1 to $4 per day, and from 3 to 10 temporary clerks employed at the rate of from $1 to $3.50 per day.

PHILADELPHIA AGENCY.

During 1887 there were employed at this agency 1 clerk at $1,500, 2 clerks at $1,400, 1 clerk at $900, 1 clerk at $800, 2 clerks at $600, and 1 clerk at $360; also 16 temporary clerks at the rate of from $1.50 to $2 per day.

During 1888 there were 1 clerk at $1,500, 2 clerks at $1,400, 2 clerks at $900, 2 clerks at $780, 1 clerk at $500, and 1 clerk at $450; also, from 17 to 19 temporary clerks at the rate of from $1.50 to $2.50 per day.

During 1889 there were employed 1 clerk at from $1,500 to $1,800, 2 clerks at from $1,400 to $1,500, 1 clerk at $1,000, 1 clerk at $900, 1 clerk at $840, 1 clerk at $780, 1 clerk at $720, and 4 clerks at from $420 to $600; also, from 17 to 19 temporary clerks at the rate of from $1.50 to $2 per day.

During the first six months of 1890 there were 1 clerk at $1,800, 1 clerk at $1,400, 1 clerk at $1,000, 1 clerk at $900, 1 clerk at $780, 1 clerk at $720, 1 clerk at $500, and 1 clerk at $480; also from 15 to 20 temporary clerks at the rate of from $1.50 to $2.50 der day.

PITTSBURGH AGENCY.

During 1887 there were employed at this agency 3 clerks at $1,000, 5 clerks at $600, 3 clerks at $480, 2 clerks at $300, and 1 clerk at $180 each.

During 1888 there were 1 clerk at $1,150, 1 clerk at $1,100, 1 clerk at $960, 1 clerk at $900, 6 clerks at $600, 1 clerk at $420, 1 clerk at $300, and 1 clerk at $120 each.

During 1889 there were 2 clerks at $1,200, 2 clerks at $960, 6 clerks at $600, 1 clerk at $420, 1 clerk at $360, 1 clerk at $300, and 1 clerk at $240 each.

During the first six months of 1890 there were 2 clerks at $1,150, 2 clerks at $936, 4 clerks at $595, 1 clerk at $468, 1 clerk at $420, 1 clerk at $409; also, 2 temporary clerks at the rate of $1.67 per day each.

SAN FRANCISCO AGENCY.

During 1887 there were employed at this agency 1 clerk at $1,500, 1 clerk at $1,080, and 1 clerk at $900; also, 1 temporary clerk at the rate of $2.50 per day.

During 1888 there were 1 clerk at $1,500 and 2 clerks at $900 each.

During 1889 there were 1 clerk at $1,500 and 2 clerks at $900 each.

During the first six months of 1890 there were 1 clerk at $1,200 and 2 clerks at $764 each.

TOPEKA AGENCY.

During 1887 there were employed at this agency 1 clerk at $2,000, 1 clerk at $1,200, 4 clerks at $1,000, and 2 clerks at $900 each; also, from 9 to 10 temporary clerks employed at the rate of from $2.50 to $4 per day.

During 1888 there were 1 clerk at $2,000, 1 clerk at $1,300, 2 clerks at $1,100, and 5 clerks at $1,000 each; also from 1 to 10 temporary clerks at the rate of from $1.67 to $5 per day.

During 1889 there were 1 clerk at $2,000, 1 clerk at $1,300, 1 clerk at $1,200, 1 clerk at $1,100, and 5 clerks at $1,000; also, from 11 to 12 temporary clerks at the rate of from $2.50 to $4 per day.

During the first six months of 1890 there were 1 clerk at $2,000, 1 clerk at $1,400, 1 clerk at $1,200, 2 clerks at $1,100, 3 clerks at $1,000, and 3 clerks at $900 each; also, 11 temporary clerks at the rate of from $2.50 to $4 per day.

WASHINGTON AGENCY.

During 1887 there were employed at this agency 1 clerk at $1,800, 1 clerk at $1,500, 1 clerk at $1,400, 6 clerks at $720, and 1 clerk at $240; also, from 1 to 18 temporary clerks at the rate of from $1.50 to $3 per day.

During 1888 there were 1 clerk at $1,800, 2 clerks at $1,080, 7 clerks at $780, 2 clerks at $720, 1 clerk at $360, and 1 clerk at $96; also, from 7 to 25 temporary clerks at the rate of from 50 cents to $5 per day.

During 1889 there were 1 clerk at $1,800, 1 clerk at $1,600, 2 clerks at $1,200, 1 clerk at $1,000, 6 clerks at $780, 5 clerks at $600, 1 clerk at $480, and 1 clerk at $192; also, from 17 to 20 temporary clerks at the rate of from 75 cents to $2.50 per day.

During the first six months of 1890 there were 1 clerk at $1,500, 1 clerk at $1,400, 2 clerks at $1,000, 1 clerk at $800, 6 clerks at $600, 1 clerk at $480, and I clerk at $240; also, from 8 to 9 temporary clerks at the rate of from $1 to $1.75 per day.

RECAPITULATION.

Fiscal years.	Number of permanent clerks.	Number of temporary clerks.	Amount appropriated for clerk hire.	Actual amount expended for clerk hire.
1887	183	163	$150,000.00	$147,772.99
1888	194	160	162,000.00	161,375.88
1889	219	173	178,000.00	177,377.41
1890 (half year)	220	113	178,000.00	88,384.10

Average annual salaries paid to permanent clerks at pension agencies:

1887	$814.67	1889	$826.45
1888	725.64	1890 (half year)	780.63

Average salaries paid to temporary clerks at pension agencies per day:

1887	$1.99	1889	$1.97
1888	2.00	1890 (half year)	2.00

EXPENDITURES FOR CLERK HIRE, 1887–1890.

Amount expended by each pension agent for clerk hire during the fiscal years 1887, 1888, *and* 1889, *and during the first six months of* 1890.

Agencies.	1887.	1888.	1889.	Half of 1890.
Augusta	$3,492.16	$3,634.50	$4,000.00	$2,438.00
Boston	9,865.16	10,662.42	10,889.84	5,151.50
Buffalo (Syracuse)	9,025.00	9,205.94	10,686.00	5,138.00
Chicago	14,221.37	16,002.91	16,000.00	7,417.14
Columbus	14,518.95	15,724.86	16,949.81	8,963.00
Concord	4,792.50	5,135.00	5,498.00	2,634.86
Des Moines	6,914.00	7,348.25	8,500.00	5,222.40
Detroit	6,890.00	7,000.00	7,500.00	4,362.00
Indianapolis	12,175.00	13,792.00	16,700.00	8,073.50
Knoxville	7,294.49	8,850.61	8,350.78	4,036.42
Louisville	3,710.00	4,008.00	4,700.00	2,522.50
Milwaukee	7,176.51	7,509.72	7,923.00	4,640.15
New York	8,998.02	8,890.25	9,624.75	4,600.42
Philadelphia	8,744.50	9,461.75	10,999.00	4,937.53
Pittsburgh	6,664.00	8,725.00	9,450.00	4,182.16
San Francisco	2,726.00	3,092.00	3,508.00	1,263.58
Topeka	9,214.33	11,237.67	12,098.23	6,854.50
Washington	10,350.00	10,945.00	14,510.00	5,736.87
Total	147,772.99	161,375.88	177,377.41	88,384.10
Amount appropriated	150,000.00	162,000.00	178,000.00	178,000.00

FUEL.

Amount expended by each agent for fuel during the fiscal years 1887, 1888, *and* 1889, *and during the first six months of* 1890.

Agencies.	1887.	1888.	1889.	Half of 1890.
Augusta	$87.58		$97.38	$32.81
Boston				
Buffalo (Syracuse)				
Chicago				
Columbus				
Concord	100.00			
Des Moines				
Detroit	155.00	$100.00	150.00	64.00
Indianapolis				
Knoxville				
Louisville				
Milwaukee				
New York		160.50	157.50	42.00
Philadelphia				
Pittsburgh	102.29			
San Francisco	20.25			
Topeka				
Washington	118.00	110.65	99.75	46.75
Total	582.12	371.15	504.63	177.56
Amount appropriated	1,200.00	750.00	750.00	750.00

LIGHTS.

Amount expended by each agent for lights during the fiscal years 1887, 1888, *and* 1889, *and during the first six months of* 1890.

Agencies.	1887.	1888.	1889.	Half of 1890.
Augusta	$13.20		$17.40	$10.80
Boston				
Buffalo (Syracuse)	18.75			
Chicago				
Columbus	114.32	$16.45		
Concord	38.00	36.60		
Des Moines	29.36			
Detroit	61.02	57.60	89.10	28.80
Indianapolis				61.52
Knoxville				
Louisville				
Milwaukee	20.44			
New York	13.49	149.60	295.00	121.53
Philadelphia				
Pittsburgh	78.30			
San Francisco				
Topeka				
Washington	39.52	28.14	20.65	12.15
Total	426.40	288.39	322.75	234.80
Amount appropriated	2,000.00	750.00	750.00	750.00

STATIONERY, ETC.

Amount expended by each agent for contingent expenses during the fiscal years 1887, 1888, *and* 1889, *and during the first six months of* 1890.

Agencies.	1887.	1888.	1889.	Half of 1890.
Augusta	$400.00	$400.37	$403.81	$262.59
Boston	499.92	623.08	552.25	341.55
Buffalo (Syracuse)	450.00	574.38	1,346.38	372.18
Chicago	615.73	844.54	1,200.00	584.87
Columbus	998.31	1,208.05	1,399.74	764.06
Concord	196.90	398.11	674.60	185.39
Des Moines	611.96	649.91	920.54	458.33
Detroit	539.50	638.42	725.00	364.92
Indianapolis	875.00	930.57	1,350.00	689.58
Knoxville	406.29	582.17	622.15	153.82
Louisville	250.00	340.21	373.30	215.54
Milwaukee	529.05	567.83	536.94	409.59
New York	409.60	732.84	593.53	665.23
Philadelphia	412.60	676.81	650.00	346.79
Pittsburgh	336.16	965.04	876.75	702.28
San Francisco	317.25	270.10	525.00	109.48
Topeka	599.86	842.13	901.94	494.37
Washington	505.00	733.42	1,296.00	960.77
Total	9,000.53	11,977.98	15,046.93	8,061.34
Amount appropriated	9,000.00	12,000.00	16,000.00	16,000.00

RENT.

Amount expended by each pension agent for rent during the fiscal years 1887, 1888, *and* 1889, *and during the first six months of* 1890.

Agencies.	1887.	1888.	1889.	Half of 1890.
Augusta	$428.00	$563.20	$380.00	$190.00
Boston				
Buffalo (Syracuse)	1,010.00	1,045.00		
Chicago				
Columbus	1,780.00	750.00		
Concord	675.00	650.00	570.00	
Des Moines	1,135.00	1,200.00	1,190.00	
Detroit	1,200.00	1,200.00	1,200.00	600.00
Indianapolis	1,000.01	1,600.00	1,600.00	812.50
Knoxville				
Louisville				
Milwaukee	1,796.04	1,600.00	1,600.00	800.00
New York	4,833.34	4,000.00	4,000.01	2,000.00
Philadelphia				
Pittsburgh	2,000.00	2,000.00	2,000.00	1,000.00
San Francisco	640.00	679.92	680.00	340.00
Topeka				
Washington	2,000.00	1,800.00	1,050.00	450.00
Total	18,497.39	17,088.22	14,270.01	6,301.50
Amount appropriated	20,000.00	20,000.00	18,200.00	18,200.00

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 266.

BRIDGE ACROSS THE ST. CROIX RIVER.

February 18, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. Mason, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 4574.]

The committee has considered the provisions of this bill, and the same has moreover received the approval of the War Department, as will be seen by the accompanying correspondence, which is made a part of this report.

The committee, however, deem it important that the right to alter, amend, or repeal in all such cases, and therefore, and to the end that if Congress shall desire to provide for a draw-bridge at any future time, the committee recommend that the bill be amended by adding a third section as follows:

"Section 3. The Congress of the United States reserves the right to alter, amend, or repeal this act."

And that thus amended the bill pass.

War Department,
Washington, January 25, 1890.

Sir: I return herewith House bill 4574, a bill "for the construction of a bridge across the St. Croix River," and invite your attention to the inclosed report of the Chief of Engineers, which expresses the views of the Department.

Very respectfully,

Redfield Proctor,
Secretary of War.

Hon. Chas. S. Baker,
Chairman Committee on Commerce, House of Representatives.

Office of the Chief of Engineers,
United States Army,
Washington, D. C., January 24, 1890.

Sir: I have the honor to acknowledge reference to this office of House bill 4574, Fifty-first Congress, first session, "A bill for the construction of a bridge across the St. Croix River," and beg leave to return the same with remark that the bill is identical in terms with bill of similar title, S. 547, Fifty-first Congress, first session, upon which report was submitted from this office on the 20th ultimo.

The proposed location of the bridge is about 5 miles above the head of tide-water at Calais and of present navigation in the St. Croix River. There is at present no commercial navigation upon the river at the point indicated, and there is no probability that a draw will ever be required in the bridge if located as proposed.

There is no objection known to this office to the passage of the bill, so far as navigation interests are concerned.

The bill appropriates $3,000 to aid in the construction of the bridge.

Very respectfully, your obedient servant,

Thos. Lincoln Casey,
Brig. Gen., Chief of Engineers.

Hon. Redfield Proctor,
Secretary of War.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 267.

HEIRS OF TILGHMAN WEAVER, DECEASED.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Culbertson, of Pennsylvania, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 7210.]

The Committee on War Claims, to whom was referred the petition of the heirs of Tilghman Weaver, submit the following report:

That the claim is for wood taken from the farm of the decedent in Fauquier County, State of Virginia, in the years 1862, 1863, 1864, and 1865, by the Army of the United States. Amount not stated in petition

It appears from the proof submitted that the attorney for said estate, on February 23, 1867, filed a claim before the Quartermaster-General for adjudication, and that officer disallowed it in a report to the effect "that as the wood was cut in the years 1862, 1863, and 1864, in the State of Virginia, the claimant can not be afforded relief by this Department;" and it appears the action of the Quartermaster-General was approved by the Secretary of War.

It seems to your committee that an investigation by the Secretary of War, or under his direction, is a matter of necessity before intelligent action can be had upon this case, and the committee desire the benefit of such proof outside of the *ex-parte* statements of the petitioners.

The committee therefore report herewith a bill conferring power upon the Secretary of War to have the case investigated through the Quartermaster's Department and to report the result, with his recommendation thereon, to Congress for its action in the premises.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 268.

HENRY J. HEWITT.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Culbertson, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 7211.]

The Committee on War Claims, to whom was referred the bill (H. R. 1849) for the relief of Henry J. Hewitt, report as follows:

The affidavits of the claimant, Henry J. Hewitt, and ten other persons, several of them ex-Union officers and soldiers, and two or three of them employés of claimant in carrying the United States mails during the years 1862, 1863, 1864, and 1865, show that a large quantity of forage and several horses and wagons belonging to claimant were taken by the United States military authorities in northern Missouri during the years named. It also appears that at the time this forage and these horses and wagons were taken, the claimant was a subcontractor for carrying the United States mails in northern Missouri and southern Iowa, one of these mail routes being No. 10481, and it is alleged by claimant in his affidavit that this personal property, so taken, was purchased by him for the purpose of fulfilling his contract in carrying the United States mails over the several mail routes.

The affidavits also allege that the hotel, store-house, and barn owned by claimant at Macon City, Mo., and the barn owned by him at Lancaster, Mo., were occupied during the year above named by the United States military forces.

It also appears from the evidence on file that very soon after the war the claimant placed his claim in the hands of A. Slingerland, clerk of the court of Adair County, Mo., for the purpose of having it filed in the proper Department and prosecuted; that a short time subsequent thereto Mr. Slingerland went to Colorado on a visit for the benefit of his impaired health, and while there he died; that the claimant supposed that his claim had been properly filed by Mr. Slingerland in his life time, and did not learn to the contrary until long after his death and too late to file the same in the proper Department.

Your committee believe that the delay in presenting this claim was not due to any laches on the part of the claimant, and that in view of the allegation that the articles taken were purchased by him for the purpose of fulfilling his contract to carry the United States mails, he

should in all equity have the same opportunity as other loyal claimants have heretofore had to establish the justice of his claim.

Your committee are therefore of the opinion that the claim of Henry J. Hewitt should be investigated by the Quartermaster Department, U. S. Army, as other claims of this character have heretofore been investigated.

They accordingly report herewith a bill as a substitute for the bill H. R. 1849, and recommend that the same do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 269.

W. H. COLLARDS ET AL.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Culbertson, from the Committee on War Claims, submitted the following

REPORT:

[To accompany the bill H. R. 3069.]

The Committee on War Claims, to whom was referred the bill (H. R. 3069) for the relief of W. H. Collards, John A. Elsaser, Peter Johnson, George Shade, M. G. Brown, Jonas F. Reitz, and L. H. Boyd, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and recommend that the bill do pass.

[House Report No. 3342, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 7534) for the relief of W. H. Collards, John A. Elsaser, Peter Johnson, George Shade, M. G. Brown, Jonas F. Reitz, and L. H. Boyd, having had the same under consideration, respectfully report as follows:

These claims originated as follow: On the 12th day of March, 1887, certain soldiers of the U. S. Army stationed at Fort Hays, in the State of Kansas, while burning off the rubbish from the fort garden, by the order of the commanding officer, negligently permitted the fire kindled by them to escape beyond their control, and said fire spread and extended until it reached the farms and houses of these claimants, and entering upon said farms consumed property to the amount and value mentioned in the bill.

There is no doubt as to the origin of the fire or as to the value or ownership of the property destroyed. This claim is made on the ground that the loss was caused by the negligence of this officer and the soldiers under his command while performing duties devolving upon them in line of duty and in the service of the Government.

The question is, should the Government of the United States be held liable or responsible for damages occurring in this manner? To state the case as it is, these losses were caused by the negligence of the agents or employés of the Government while they were in charge of the fort and in the performance of a duty devolving upon them in the service of the Government. The losses and damages sustained by these claimants were not caused by any fault or negligence of the claimants, but are attributable to the gross negligence of these agents of the Government.

These claimants, under the conceded facts in these cases, would be entitled to recover if the contest were between them and a private citizen or a corporation. Is this right affected by the fact that the wrong-doer is the Government? In other words, is the Government liable for such damages, or would it be liable under the circumstances if it could be sued in the courts? Your committee would have much difficulty in assenting to this proposition of the liability of the Government if it were a new one. It would seem to be a dangerous proposition to affirm that the Government of the United States should be made liable for losses occasioned by the negligent and tortuous acts of its agents and employés; but your committee find that

many acts have been passed by Congress to pay such losses. A collection of many special acts of Congress recognizing the duty of the Government to re-imburse its citizens for losses occasioned by the negligence or misconduct of the officers and agents of the United States may be found in the report of the Committee on Claims at this session of Congress in the case of the owners of the steamer *I. N. Burton* (H. R. 7211), and that report, together with the findings and decision of the Court of Claims (Congressional Case No. 68), and the adoption of that report by the House by the passage of the bill has, in the opinion of your committee, established a precedent which your committee feel bound to respect. Your committee quote from the report above cited as follows:

"A large number of special acts have been passed recognizing the duty of the Government to reimburse private citizens for losses sustained by collisions on the high seas or inland waters, when the Government vessel was at fault and when no negligence could be imputed to the claimants. We here give a summary of these, which, however, is in all probability not a complete one:

"(1) An act for the relief of T. H. Holderness, owner of the British ship *Duke of Edinburgh*, approved January 27, 1873 (17 Stat. L., p. 717). This act appropriated to reimburse the owner of that vessel for injuries received by collision with the United States steamer *General McPherson*.

"(2) A resolution referring to the Court of Claims claims against the United States for the loss of the schooner *William Carlton*, approved March 3, 1871 (16 Stat. L., p. 705). This act referred to that court the claim of the owners of said schooner, her cargo, etc., for loss by collision with the United States ram *Stonewall*, on November 23, 1865. That court rendered judgment in favor of the claimants against the Government for $28,026.85. (10 Court of Claims Reports, p. 485.)

"(3) An act referring the claim of the owners of the schooner *Ada A. Andrews* to the Court of Claims approved June 20, 1874 (18 Stat. L., p. 201). Judgment against the United States was rendered by the Court of Claims for $28,809.35. (12 Court of Claims Reports, p. 480.)

"(4) An act referring the claim of the owners of the schooner *Flight* to the Court of Claims approved January 12, 1877 (19 Stat. L., p. 503). The claimants recovered $3,875. (14 Court of Claims Reports, p. 425.)

"(5) An act granting jurisdiction and authority to the Court of Claims in the case of the schooner *Dom Pedro* approved March 3, 1879 (20 Stat. L., p. 483). Judgment for claimants for $7,799.60. (19 Court of Claims Reports, p. 684.)

"(6) An act for the relief of George R. Dennis, of Maryland, approved June 10, 1878 (20 Stat. L., p. 540). This act directed the Secretary of the Treasury to pay to George R. Dennis $2,393.66 for damages sustained by him by the Government steamer *General Meigs* running into his schooner *William J. Dennis*.

"(7) The sundry civil appropriation act of August 7, 1882 (22 Stat. L., p. 324), appropriated for two cases of similar character, one of them being 'to pay to Isaac A. Sylvester, for the losses and damages sustained by him on account of the collision of the United States sloop of war *Lancaster* with the drill-platform and sloop *Derry* at Gangway Rock, Portsmouth, N. H., $2,000, in full satisfaction thereof.'

"(8) The sundry civil appropriation act of 1883 appropriated $19,957 to re-imburse the Potomac Steam-boat Company for a collision in Hampton Roads with a United States naval tug.

"(9) Three similar claims, aggregating $14,237.92, were appropriated for in the sundry civil appropriation act approved March 3, 1885. (23 Stat. L., p. 496)."

The existence of a right as against the Government in cases of tort is fully recognized by that distinguished jurist Judge Cooley, who, in his work on torts, says (page 122):

"Even the State or General Government may be guilty of individual wrongs, for while each is a sovereign it is a corporation also, and as such is capable of doing wrongful acts. *The difficulty here is with the remedy, not with the right.* No sovereignty is subject to suits, except with its own consent. But either this consent is given by general law, or some tribunal is established with power to hear all just claims; or if neither of these is done, the tort remains, and it is always to be presumed that the legislative authority will make the proper provision for redress when its attention is directed to the injury."

In view of this authority and these acts of Congress, sustained as they are by the passage of said bill (H. R. 7211) by this House, your committee are constrained in this case to recommend the passage of this bill.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 270.

MAURICE GRIVOT.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Culberson, from the Committee on War Claims, submitted the following

REPORT:

[To accompany the bill H. R. 3704.]

The Committee on War Claims, to whom was referred the bill (H. R. 3704) for the relief of the heirs of Maurice Grivot, have given careful consideration to the same, and ask to report:

That this claim was presented to the Fiftieth Congress, and a report was made in regard to it by the Committee on War Claims, on the 10th of February, 1888. As the examination by your committee has led them substantially to the same results with those arrived at by the committee of 1888, they do not think it necessary to recapitulate the facts, but refer to that report, and therewith annex a copy for information.

Your committee recommend that the bill referred to them do pass.

The Committee on War Claims, to whom was referred the bill (H. R. 5146) for the relief of the heirs of Maurice Grivot, late of New Orleans, La., have examined the same, and report as follows:

The heirs of Maurice Grivot claimed originally the sum of $220.34, turned into the Treasury of the United States from the sale of certain household effects confiscated by the United States; also, payment for certain deposits in the branch of the Louisiana State Bank at New Orleans amounting to $1,574.79, which were illegally seized by the military authorities of the United States.

It appears that $611.94 of this amount was in Confederate funds and the remainder in par or current funds. Of these items the payment of the last amount only, the sum of $962.85, is now asked for by the claimants. The payment of this amount has been recommended a number of times and a bill substantially the same as that before us passed the Senate of the Forty-ninth Congress. This committee recommends the passage of the bill reported herewith, providing for the payment of the sum of $962.85, and adopts as its own so much of the report made by the Senate Committee on Claims in the Forty-ninth Congress (Senate Report 59) as provides for the payment of the amount now asked for, only omitting from that report the portion which relates to the amounts adversely reported on and the payment of which is no longer asked.

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was it a seizure for immediate use of the Army. It was simply an attempt to confiscate private property, which, though it may be subject to confiscation by legislative authority, is, according to the modern law of nations, exempt from capture as booty of war. Still, as the war had not ceased, though it was not flagrant in the district, and as General Banks was in command of the district, it must be conceded that he had power to do all that the laws of war permitted, except so far as he was restrained by the pledged faith of the Government or by the effect of Congressional legislation. A pledge, however, had been given that rights of property should be respected. When the city was surrendered to the army under General Butler, a proclamation was issued dated May 1, 1862, one clause of which was as follows: '*All the rights of property of whatever kind will be held inviolate*, subject only to the laws of the United States.' This, as was remarked in the case of the *Venice* (2 Wallace, 258), 'only reiterated the rules established by the legislative and executive action of the National Government in respect to the portions of the States in insurrection occupied and controlled by the troops of the Union.'

"That action, it was said, indicated the policy of the Government to be, not to regard districts occupied and controlled by national troops as in actual insurrection, or their inhabitants as subject in most respects to treatment as enemies. Substantial, complete, and permanent military occupation and control was held to draw after it the full measure of protection to persons and property consistent with a necessary suggestion to military government. We do not assert that anything in General Butler's proclamation exempted property within the occupied district from liability to confiscation as an enemy's property, if in truth it was such. All that is now said is, that after that proclamation private property in the district was not subject to military seizure as booty of war. But admitting as we do that private property remained subject to confiscation, and also that the proclamation applied exclusively to inhabitants of the district, it is undeniable that confiscation was possible only to the extent and in the manner provided by the acts of Congress. These acts were passed on the 6th August, 1861, and on the 17th July, 1862.

"No others authorized the confiscation of private property, and they prescribed the manner in which alone confiscation could be made. They designated Government agents for seizing enemies' property, and they directed the mode of procedure for its condemnation in the courts. The system devised was necessarily exclusive. No authority was given to a military commandant, as such, to effect any confiscation. * * * It is therefore of little importance to inquire what, under the general laws of war, are the rights of a conqueror, for during the recent civil war the Government of the United States asserted no general right in virtue of conquest to compel the payment of private debts to itself. On the contrary, it was impliedly disclaimed, except so far as the acts of 1861 and 1862 asserted it. These enactments declaring that private property belonging to certain classes of persons might be confiscated, in the manner particularly described, are themselves expressive of an intent that the rights of conquest should not be exercised against private property except in the cases mentioned and in *the manner pointed out*. * * * It follows, then, that the order of General Banks was one which he had no authority to make, and that his direction to the bank to pay to the quartermaster of the Army the debt due the Planters' Bank was wholly invalid."

The Supreme Court having thus decided that the attempt of the commanding general of the department to enforce by military order the confiscation acts of Congress against the property and effects of rebellious citizens of the United States was without authority and invalid, and it further appearing that there has never been any judicial procedure for the condemnation of the funds thus seized as directed and required by the confiscation acts of 1861 and 1862, so as to divest and defeat the private rights and interests of the owner, it follows that the United States acquired no valid title under that seizure to the money of Grivot, who before his death received full and complete amnesty from the Government, which removed the only ground on which confiscation or an actual divestiture of his interests could be predicted. The possession obtained by the Government under the unauthorized order of its commanding officer conferred upon it no higher or stronger right to this fund than that acquired by a seizure under the captured and abandoned property acts.

The Government simply got possession of the fund, with the right to have it condemned and confiscated in the *exclusive* mode and manner directed and prescribed by the confiscation acts of 1861 and 1862, but before exercising this right, which was necessary to a valid divestiture of the owner's title and to perfect its own, the Government confers upon the owner complete amnesty for all the past offenses which entitled it to confiscate the fund. This grant of amnesty was a voluntary surrender and abandonment by the United States of its right to complete and perfect that judicial condemnation of the fund which was necessary to defeat the owner's interest. Having been pardoned before any legal and valid divestiture of his rights was had, the acts of Congress and the decisions of the Supreme Court entitle the owner or his legal

representatives to the full benefit of a restoration of his property as completely as though no seizure had ever been made or military confiscation attempted.

Under the authority of Armstrong *vs.* United States (13 Wallace, 154) and Pargoud *vs.* United States (16 Wallace, 156) the claimants in the present case, if they could sue the Government, would be entitled to recover this fund. Will Congress deny to them, simply because it has the power to withhold, what the courts of the United States would allow as a valid right? To do so would be the exercise of a punitive power, destructive of the rights which the clemency of the Executive Department has lawfully restored. It would present a singular anomaly for Congress to deny rights recognized by the judicial and executive departments of the Government.

Your committee, therefore, consider that the money belonging to Grivot, to the extent of $962.85, received, as aforesaid, by the Government in par funds, should be restored to his heirs at law, and they accordingly recommend the passage of the bill.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 271.

WILLIAM BUSHBY.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Taylor, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2086.]

The Committee on War Claims, to whom was referred the bill (H. R. 2086) for the relief of William Bushby, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and recommend that the bill do pass.

[House Report No. 979, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the claim of William Bushby, report as follows:

The Committee on War Claims of the Forty-eighth Congress, not being fully and clearly advised of all the facts in this case, referred the same to the Court of Claims for a finding of facts, under the provisions of the Bowman Act.

This claim has been returned to the committee with a finding of facts.

Your committee report herewith a bill for the relief of William Bushby, and recommend its passage, and ask that the Mis. Doc. be printed as a part of this report.

[Court of Claims. Congressional Case No. 171. William Bushby *vs.* The United States.]

FINDINGS OF FACT.

At a Court of Claims held in the city of Washington on the 20th day of February, A. D. 1888, the court filed the following findings of fact, to wit:

The claim or matter in the above-entitled case was transmitted to the court by the Committee on War Claims of the House of Representatives on the 15th day of December, 1884.

Edwin B. Hay, esq., appeared for claimant, and the Attorney-General, by Felix Brannigan, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 6th day of February, 1888, the court upon the evidence, and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

I.

Samuel N. Garwood, having been previously elected sheriff of Alexandria County, Va., was qualified January 1, 1863.

By virtue of his office, under the laws of Virginia, the sheriff took charge of the jail and its prisoners; but at this time it was under the control of a military guard and used for both military and civil prisoners.

II.

March 31, 1863, the sheriff, after consultation with Brig. Gen. John P. Slough, who was then in command as military governor at Alexandria, appointed the claimant jailer. On the same day General Slough issued the following order:

HEADQUARTERS MILT. GOV.,
Alexandria, Va., March 31, 1863.

OFFICER COMMANDING JAIL GUARD:

The sheriff has appointed Wm. Bushby jailer. You will recognize him as such.

JNO. P. SLOUGH,
Brig. General, Milt. Gov., Alexa., Va.

This order was sent to the "commander of the guard" through Lt. Col. H. H. Wells, who was at that time provost-marshal of Alexandria.

The next day, April 1, 1863, the claimant entered upon his duties as jailer.

III.

Thereafter, in a consultation between General Slough, Provost-Marshal Wells, the sheriff, and the claimant, it was understood or agreed that the claimant should do the cooking for the military prisoners, and for this service and the use of the jail for the purpose he should receive 5 cents a day for each prisoner.

In pursuance of this understanding, the following order was issued:

April 13, 1863.

LIEUTENANT COMMANDING JAIL:

You will allow William Bushby, a jailer, to occupy the jail for the care of prisoners committed by the civil authorities as follows: The jailer will have the care of all civil prisoners; he will furnish all cooks that are required, and cook the food for all prisoners, military as well as civil, and do all policing.

The guard under the command of the lieutenant will distribute the food, and the lieutenant will have charge of the rations, seeing that no more is used than is required by the military prisoners, and that all over is carefully saved. The civil authorities will provide rations for their own prisoners. The military authorities will allow 5 cents per day to the jailer for the use of the prison, cooking rations, etc.

H. H. WELLS,
Lieutenant-Colonel and Provost-Marshal.

Thereupon the claimant began this service. He kept an account of the number of military prisoners, which account, being verified by the "commander of the guard," was allowed and paid at the end of each month until August 1, 1864, at the rate of 5 cents a day for each prisoner.

For eight months, beginning August 1, 1864, and ending April 1, 1865, he was allowed and paid $100 a month.

For the four following months, ending August 1, 1865, at which time his services ceased, he was allowed and paid at the rate of $50 a month.

IV.

The reduction in the amount allowed and paid was made, according to the claimant's testimony, in consequence of General Slough being relieved from duty as military governor and Lt. Colonel Wells taking his place; for what reason does not appear. The claimant did not assent to the reduction.

V.

If, under these circumstances, the claimant was entitled to demand compensation after August 1, 1864, at the same rate as before that date, instead of by the month as allowed and paid, the Government would still owe him, according to his account of the number of prisoners, verified as aforesaid, one thousand seven hundred and twenty-eight dollars and eighty-five cents ($1,728.85).

VI.

The jail for which the claimant demands rent belonged to the county of Alexandria, and the same was seized by the United States Army and used for military purposes.

Of this class of claims this court is forbidden to take jurisdiction by the third section of the Bowman Act, and therefore this part of the claim is dismissed without further examination.

BY THE COURT.

Filed February 20, 1888.
A true copy.
Test, this second day of March, A. D. 1888.
[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Ct. of Claims.

[In the Court of Claims. No. 171. Congressional claim. Wm. Bushby *vs.* The United States.]

Your petitioner respectfully represents:

First. That he is a citizen of the United States, and a resident of the District of Columbia, and files this claim in his own behalf.

Second. That on March 3, 1863, he was appointed jailer at Alexandria, Virginia, by order of John P. Slough, brigadier-general and military-governor at Alexandria, Virginia, which order is filed herewith, and prayed to be taken as part hereof.

Third. That he assumed charge immediately and entered upon the duties of the position. On April 13, 1863, he entered in a contract with the United States Government, through its representative, H. H. Wells, lieutenant-colonel, at Alexandria, Virginia, for an allowance of 5 cents per diem for the use of prison, cooking, rations, etc., for each military prisoner. (A copy filed herewith.)

Fourth. That he performed faithfully the requirements of the contract from April 1, 1863, to July 31, 1865, for the total number of one hundred thousand two hundred and seventy-six prisoners, on an average of one hundred and nineteen per day, at 5 cents, making a total amount due of $5,013.80, of which he received on account $3,274.95, leaving a balance due of $1,738.85, of which he has never received one cent, nor has it ever been paid or tendered him, or to any one for him. A bill of particulars or full statement is filed herewith and prayed to be taken as a part of this petition.

Fifth. That this claim is for $1,738.85, it being the amount due and unpaid.

Sixth. That this claim has been before Congress for a number of sessions, and in the Forty-fourth Congress received a favorable report from the Committee on War Claims, but failure in being reached upon the Calendar has prevented any action upon it in the House of Representatives.

Seventh. That it is now referred to the Court of Claims under the act of March 3, 1883.

WILLIAM BUSHBY.

CITY OF WASHINGTON, *District of Columbia, ss:*

William Bushby, being duly sworn, deposes and says that he is the person described in and who signed the foregoing petition; that no assignment or transfer of said claim therein mentioned, or any part thereof, or any interest therein, has ever been made; that he is justly entitled to the amount claimed from the United States after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

WILLIAM BUSHBY.

Subscribed and sworn to before me this 22d day of January, A. D. 1885.

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Petition filed January 22, 1885.

EDWIN B. HAY,
Plaintiff's Attorney.

[Contract.]

LIEUTENANT COMMANDING JAIL:

You will allow William Bushby, a jailer, to occupy the jail for the care of prisoners committed by the civil authorities as follows: The jailer will have the care of all civil prisoners; he will furnish all cooks that is required, and cook the food for all prisoners, military as well as civil, and do all policing.

The guard, under the command of the lieutenant, will distribute the food, and the lieutenant will have charge of the rations, seeing that no more is used than is required by the military prisoners and that all over is carefully saved. The civil authorities will provide rations for their own prisoners. The military authorities will allow 5 cents per day to the jailer for the use of the prison, cooking rations, etc.

H. H. WELLS,
Lieutenant-Colonel and Provost-Marshal.

Amendment to petition filed and allowed January 18, 1886.

The amended petition of William Bushby respectfully represents—

First. That he is a citizen of the United States and a resident of the District of Columbia, and files this claim in his own behalf.

Second. That on March 31, 1863, he was appointed jailer at Alexandria, Virginia, by order of John P. Slough, brigadier-general and military governor at Alexandria, Va., which order is filed herewith and prayed to be taken as part hereof.

Third. That he was entitled as jailer to the dwelling-house belonging to and adjoining the jail building. But, notwithstanding this prerogative, the said dwelling was not turned over to the said William Bushby until August, 1865, having been from April 1, 1863, occupied by United States military troops, thus compelling this claimant to rent a dwelling-house elsewhere, to his discomfort and pecuniary loss.

Fourth. That he was deprived of the use of the said dwelling-house for himself and family from April 1, 1863, to August, 1865, inclusive—two years and five months—during which time he was faithfully performing the duties of jailer.

Fifth. That his claim is for $1,450., that being the amount due and unpaid for the rent of said dwelling-house for two years and five months at $50 per month.

Sixth. That this claim has been before Congress for a number of sessions, and in the Forty-fourth Congress it received a favorable report from the Committee on War Claims, but failure in being reached upon the calendar has prevented any action upon it in the House of Representatives.

Seventh. That it is referred to the Court of Claims under the act of March 31, 1883.

CITY OF WASHINGTON, *District of Columbia, ss :*

William Bushby, being duly sworn, deposes and says that he is the person described in and who signed the foregoing petition; that no assignment or transfer of said claim therein mentioned, or any part thereof, or any interest therein, has ever been made; that he is justly entitled to the amount claimed from the United States, after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

WILLIAM BUSHBY.

Subscribed and sworn to before me this 18th day of January, A. D. 1886.

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 272.

MALINDA GRIMES.

FEBRUARY 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 5250.]

The Committee on War Claims, to whom was referred the bill (H. R. 5250) for the relief of Malinda Grimes, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and report back the bill and recommend its passage.

[House Report No. 1921, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 4218) for the relief of Malinda Grimes, report as follows:

The facts out of which this claim for services as a nurse arises are stated in the affidavit of claimant, which is as follows:

DISTRICT OF COLUMBIA,
Washington City, ss:

On the 18th day of October, A. D. 1877, personally appeared before me Malinda Grimes, of Washington City, D. C., who, being by me duly sworn, did depose and say that on the 7th day of August, A. D. 1862, or thereabouts, she was hired by Dr. Cadwalader, who had charge of Nelson Hospital, at Yorktown, State of Virginia, to act in said hospital in taking care of the sick, and he agreed to pay her $8 a month for and during the time she should so act; that she remained in said hospital until the 9th of March, A. D. 1866; and deponent further says that while so acting as nurse in said hospital, after Dr. Cadwalader gave up the care of the same, she acted under Drs. Jackson, Kenney, Gray, Rose, and Baker; that she has never been paid anything for her services as aforesaid; and that there is now due and owing her for such services from the United States the sum of $344, which, in her judgment, as well as in the judgment of the surgeons who hired her, is a very small remuneration for the kind of services which she rendered.

her
MALINDA + GRIMES.
mark.

Also in a statement from Dr. L. B. Kenney, late assistant surgeon, U. S. Army. He says:

"This is to certify that I know Mrs. Malinda Grimes, of Yorktown, York County, Va.; that from July 1, 1868, to January 1, 1869, I was stationed at Yorktown, as an acting assistant surgeon of Army in charge of the hospital, Bureau Freedmen and Abandoned Lands; that Mrs. Grimes was of great service to me, always ready to aid

me in every attention upon the sick. She was not employed by me on the bureau at that time, but I always understood that for several years during the time of the war she was employed as a nurse in the Yorktown Hospital, and when I reported for duty she was recommended to me as a reliable person to give me information of the people and generally aid me. I have no interest in her claim, but believe her to be a person of credit, and that she did render the service claimed.

"L. B. KENNEY, M. D.,
"*Late Acting Assistant Surgeon of Army.*"

Your committee are therefore of the opinion that there is due this claimant the amount claimed, and therefore recommend the passage of the accompanying bill.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 273.

CUMMINGS, DOYLE & CO., AND DOYLE & CO.

FEBRUARY 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. A. A. TAYLOR, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 3129.]

The Committee on War Claims to whom was referred the bill (H. R. 3129) for the relief of Cummings Doyle & Co., and Doyle & Co., report the following:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own and report back the bill and recommend its passage.

[House Report No. 1492, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 588) for the relief of Cummings, Doyle & Co., and Doyle & Co., report as follows:

The facts in the case are as stated in the petition of the claimants, which is as follows:

To the honorable the Senate and House of Representatives in Congress assembled:

Your petitioners, Cummings, Doyle & Co., and Doyle & Co., of Nashville, Tenn., respectfully represent that they are and always have been loyal citizens of the United States. That during the late war they were the owners of certain buildings located in the city of Nashville, Tenn., which they rented under contract to the United States Army, as will more fully appear by reference to the papers with claim No. 24358, on file in the Third Auditor's Office, Treasury Department.

Your petitioners would further represent that through the failure of the officer of the Quartermaster's Department stationed at Nashville, Tenn., to pay the rent due your petitioners under said contract, they suffered a loss of $2,285, receiving in lieu thereof regularly certified vouchers for that amount, which amount is still due them and remains unpaid. That relying upon the justness of their claim they subsequently made application for the payment of the amount due them under said contract, and filed the said vouchers through the proper Departments of the Government, but that payment was refused them by the accounting officers of the Treasury upon the plea that they "had no jurisdiction of this class of claims."

Therefore, in consideration of the facts set forth, and which will be found fully substantiated in claim No. 24358, on file in the Third Auditor's Office, Treasury Department, your petitioners pray that your honorable bodies may authorize and direct the Secretary of the Treasury to pay to your petitioners the sum of $2,285, in full for rent due them as heretofore stated, upon the vouchers referred to.

And your petitioners will ever pray.

CUMMINGS, DOYLE & CO.
DOYLE & CO.
By D. W. GASSIE,
Attorney in Fact.

WASHINGTON, D. C., *December*, 1874.

Your committee is of the opinion that it is the duty of the Government to pay the debt according to the agreement as shown in the certificates of the quartermaster, and report back the bill and recommend its passage.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 275.

SALLY HARDMOND.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Taylor, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 7212.]

The Committee on War Claims, to whom was referred the petition of Sally Hardmond, report as follows:

It is alleged that for many years prior to and during the late war the claimant resided in the city of Richmond, Va., where she was engaged in business as a professional nurse, earning, by means thereof, a comfortable living; that as a result of her labors as aforesaid, she succeeded in accumulating some little real estate in said city of Richmond, as also a small amount of money; that among other pieces of real estate acquired by her as above stated, was a certain lot improved by a commodious dwelling-house of twelve rooms; that during the spring of 1866 General Orlando Brown, assistant commissioner of the Bureau of Refugees of the United States, and having charge of the Freedmen's Bureau in the city of Richmond, requested the petitioner to open the said dwelling-house owned by her for the use and benefit of the refugee freedmen and their families who might come into said city from the surrounding country, and that accordingly, in compliance with his request, the petitioner so opened her said dwelling-house on the 1st day of April, 1866, and used the same for the exclusive benefit and accommodation of such freedmen and their families from that time continuously to the 1st day of April, 1872; that her said action was taken with the approval and sanction of General Brown, who repeatedly sent to her large numbers of indigent old men, women and children; that such persons were sent by General Brown to the petitioner during the entire period of said bureau, and all of whom were cared for by the petitioner at her own expense; and for which care and attention and occupancy of her premises she was constantly assured by General Brown that she would be paid whatever was just and proper.

The petitioner further represents that during the spring of 1869 she found that her said house was not of sufficient size to accommodate the large number of refugees sent to her, and she was compelled, in order to provide for these people, to secure a neighboring dwelling-house from one Mrs. Mary Bailey on the 1st day of April, 1869, at a monthly rental of $40, agreeing with Mrs. Bailey that she would be personally liable for the rent thereof, and which house she occupied continuously, in connection with her own, for the purposes aforesaid, from the time of its rental to the 1st day of April, 1872.

That of the rent due and owing to the said Mrs. Bailey for the use of

said house she paid $160, and agreed to be personally responsible for the balance; that the rental of this latter building was approved by the officers of the Freedmen's Bureau in that city, who furnished the house with some few bedsteads and some little bedding for the benefit of the inmates; that during all of said period from April 1, 1866, to April 1, 1872, the petitioner, at her own expense, furnished all the supplies for the maintenance of said home, with the exception of some few rations issued to her by General Brown, and paid all the current expenses of the home, including the wages of certain additional nurses she was forced to employ, and which cost her in the aggregate the sum of $2,230; that finding she had not sufficient means to meet the above liabilities the petitioner was compelled to mortgage her own house, above referred to, in order to secure the necessary funds for this purpose; that, with the exception of $140 paid to the petitioner on account of her personal services, she has received no compensation of any nature whatsoever on account of her large expenditures, the occupancy of her premises, or for her individual labor.

The petitioner further represents that during the month of August, 1880, she filed her claim with the Third Auditor of the Treasury Department for adjudication, and who, on the 24th day of September of the same year, rejected the claim upon the ground that—

> While her patriotism and her devotion to her race are worthy of the highest commendation, Congress alone has the power to say what shall be the fitting reward. No executive officer has power to acknowledge, as a public indebtedness, a moral duty not coupled with a legal liability. Her claim is not within the jurisdiction of the accounting officers.

This decision was approved by the Second Comptroller of the Treasury on the 13th day of May, 1881.

The claim is stated at $8,930.

The petitioner made no complaint to the War Department, nor asked any relief from that quarter, until July, 1880. This long delay the petitioner explains in the usual way, by alleging poverty; but it seems to your committee that poverty would have been a great incentive, at least, to have written a letter stating her grievance to the War Department, when all the officers connected with the Freedmen's Bureau who authorized the use of the property were in the service and amenable to the orders of the Department.

It seems to your committee that an investigation by the Secretary of War, or under his direction, is a matter of necessity before intelligent action can be had upon this case, and the committee desire the benefit of such proof outside of the *ex parte* statements of the petitioner.

The committee therefore report herewith a bill conferring power upon the Secretary of War to have the case investigated through the Quartermaster's Department, and to report the result, with his recommendation thereon, to Congress for its action in the premises.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 276.

BRIDGE OVER THE ARKANSAS RIVER IN THE INDIAN TERRITORY.

February 18, 1890.—Referred to the House Calendar, and ordered to be printed.

Mr. Walker, of Missouri, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill S. 2185.]

The Committee on Commerce, having had under consideration Senate bill 2185, "to authorize the construction of a bridge over the Arkansas River, in the Indian Territory" report the same back favorably, with an amendment, and recommend its passage. The amendment is as follows, to be inserted at the end and as a part of section 2 of the bill, to wit:

> That all railway companies desiring to use said bridge shall have and be entitled to equal rights and privileges in the passages of the same, and in the use of the machinery and fixtures thereof, and of all the approaches thereto, under and upon such terms and conditions as shall be prescribed by the Secretary of War, upon hearing the allegations and proofs of the parties, in case they shall not agree.

The railroad is now constructed and in operation for about 100 miles on the north side of the river, from Coffeyville, Kans., to Fort Smith, Ark. Two roads, owned by the same company, are in operation on the south side, one having been in operation several years and the other uncompleted. The bridge is imperatively necessary to the welfare of the company and the convenience of the people, and the bill has been approved by the Secretary of War.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 277.

JEAN LOUIS LEGARE.

FEBRUARY 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HALL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 1826.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 1826), for the payment of Jean Louis Legare for money expended and for services rendered in procuring the surrender of Sitting Bull, having had the same under consideration, beg to submit the following report:

This claim grows out of services performed by the claimant for the United States Army and for supplies furnished Sitting Bull and his band of Indians, to induce their surrender to the United States.

After the battle of Little Big Horn, in the year 1876, in which General Custer was killed, Sitting Bull and his followers, being pursued by the army, crossed from the United States into the Territory of Canada, where they were not only an annoyance to the Canadian Government, but were a constant menace to our Government by their raids across the line, making it necessary to maintain a large number of troops on the frontier to prevent trouble from these Indians.

Repeated efforts were made during the years 1877 to 1881 to secure their surrender. But all efforts failed until the claimant, who was peculiarly fitted for the work by his life among the Northwest Indians, at the solicitation of Major Brotherton, undertook to secure their return to the United States, and their surrender to the army at Fort Buford, Dakota. This he accomplished during the year 1881.

Legare undertook this work after an interview with Major Brotherton, commander of the post at Fort Buford, who assured him if he was successful in bringing in these Indians, that the Government would undoubtedly pay him for his services.

After the claimant had brought in the first lot of Indians, Major Brotherton telegraphed General A. H. Terry, commanding the Department of Dakota, at St. Paul, Minn., as follows:

[Copy telegram.]

FORT BUFORD, D. T.,
May 29th, 1881.

General A. H. TERRY,
Commanding Department of Dakota,
St. Paul, Minn.:

I have considered it best to retain Mathey's troop, as sending it away would reduce the garrison to one hundred and eighty-six (186) present for duty. I expect more Indians in very soon—perhaps the greater portion of those at Woody Mountain—and it may be some from Sitting Bull at Lake Qu'Appelle. There [are?] at the two places about sixty (60) lodges, in most cases I am informed, two (2) families to a lodge, and in all about three hundred men, women, and children.

Mr. Legare, a trader at Woody Mountain, who has brought in his last two trips forty-eight (48) Indians, came [brought?] in on the twenty-sixth (26th) instant thirty-two (32); these were sent with the others to Yates. I sent back with him two of those he brought in, after they had seen and talked with their friends here. Mr. Legare tells me that the fact of their friends have [ing ?] gone below peaceably, and were so well treated while here, will, he thinks, produce a movement at once of the Indians at Woody Mountain in this direction to surrender, as they are starving where they are, and also that there is now a strong probability that Sitting Bull himself, finding so many of his adherents leaving him, even his own daughter, will have to come in.

I have known Mr. Legare since last summer; he is well known, reliable, and I have every reason, from the way things look now, to believe his impression will be realized. He has been here quite a number of times, but usually very reticent on the subject of Indians company [coming?] in, but is now outspoken, and seems thoroughly convinced that all will come in. With this in view, I thought best to retain Mathey's troop, as I presume all that come in will be shipped to Yates.

The Indians shipped the other day embarked cheerfully and willingly to all appearance. I sent with them Allison and Running Antelope. Mr. Legare left here yesterday with his train for Woody Mountain; said he would return in about two (2) weeks with all the Indians who desired to come in. He brings these Indians in, hauling their plunder on his carts, and has so far fed them on the way. Can not he be re-imbursed in some way?

(Signed) D. H. BROTHERTON,
Major 7th Infantry, Commanding.

[Telegram.]

H'DQ'RS' DEP'T OF DAKOTA,
Ft. Snelling, Minn., June 6th, 1881

COMMANDING OFFICER,
Fort Buford:

Department commander regrets he has no funds applicable or available for paying Mr. Legare for bringing Indians into Fort Buford to surrender and feeding them en route.

BRECK,
Assistant Adjutant-General.

H'DQ'RS DEPT. OF DAKOTA,
Ft. Snelling, Minn., June 8, 1881.

Official copies respectfully forwarded to headquarters Military Division of the Missouri.

ALFRED H. TERRY,
Brigadier-General, Commanding.

[1st indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, June 10, 1881.

Respectfully forwarded to the Adjutant-General of the Army.

P. H. SHERIDAN,
Lieut. General, Commanding.

[2nd indorsement.]

HEADQ'RS OF THE ARMY,
Washington, June, 13, 1881.

Respectfully submitted to the Secretary of War with copies for the Departments of State and the Interior.

W. T. SHERMAN,
General.

JUNE 15*th*, '81.

SIR: I have the honor to transmit herewith copy of a telegram from the commanding officer at Fort Buford, D. T., dated the 29th ultimo, reporting relative to the removal of Indians to Fort Yates, and stating that he expects more hostiles in from Woody Mountain or Sitting Bull's camp, also asking if a Mr. Legare, who has brought in a number of hostiles and fed them en route, can not be re-imbursed.

A similar copy is also furnished this day to the honorable Secretary of State.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

The honorable the SECRETARY OF THE INTERIOR.

While claimant was en route with Sitting Bull and 200 of his followers, Major Brotherton sent out a train to meet him, with the following letter:

FORT BUFORD, DAK.,
Friday, 15th July, 1881.

MR. LEGARE.

DEAR SIR: Your messenger with your good news arrived last night. I sent out a train this morning with rations, at your request. I send a few soldiers to take care of wagons on the road; did not send an officer, as I thought from your letter that you did not want any. The men in charge will be directed to report to you so that you can dispose and issue the rations as is best. Have sent a small present for each of the six chiefs, as you wished, which you can give to them. You can say to them that I am told by the department commander to say to them all, Sitting Bull included, that they will be well treated here, and they need fear nothing in coming in. Wagons will travel as fast as they can towards you. Shall be glad to see you when you get here.

D. H. BROTHERTON,
Maj. 7th Inf'y, Commanding.

Mr. J. L. LEGARE.

On August 30, 1881, Major Brotherton wrote to the Assistant Adjutant-General as follows:

FORT BUFORD, DAK.,
Aug. 30, 1881.

ASST. ADJ'T GENL.,
Dept. Dak., Fort Snelling, Minn.:

SIR: I have the honor to state that I have delayed answering dispatch of the 5th inst., referring to the amount of compensation that should be allowed Mr. Louis Legare for his services in bringing in to this post Sitting Bull and other Sioux Indians until I had again heard from him as to the prospect of his being able to bring in the remainder.

Mr. Legare has been engaged in this business since the early part of May last. It has been followed up by him to the neglect of his business as freighter; he also had to feed these Indians, not only on the way in, but also for some time before they came in. The total number brought in by him, including those under Sitting Bull, numbered two hundred and thirty-five. As to the sum to be allowed him as compensation for his services, taking into consideration the amount expended by him, and the importance of his service to the Government, eventuating in the surrender of Sitting Bull, I do not think that two thousand dollars would be too large an amount to allow him; this would probably cover all loss to him, and allow him a reasonable *bonus* besides, which I certainly think he deserves. My estimate is based not only on my personal knowledge of the facts, but from all that I could learn from others as to the value of the services rendered and the amount of loss incurred by Mr. Légaré.

Very respectfully, your ob't servt,

D. H. BROTHERTON,
Maj. 7th Inf'y, Commanding.

[1st endorsement.]

HEADQRS. DEPT. OF DAKOTA,
Fort Snelling, Minn., Sept. 12, '81.

Respectfully forwarded to Headquarters Military Division of the Missouri, approved. Mr. Legare has performed very valuable services, as stated within by Major Brotherton, in connection with bringing in Sitting Bull and his followers, and I think the sum proposed is a fair and equitable compensation to him therefor. So far as I am aware, no compensation was promised Mr. Légaré.

ALFRED H. TERRY,
Brigadier-General, Commanding.

[2d endorsement.]

HEADQUARTERS MIL. DIV. OF THE MISSOURI,
Chicago, Sept. 15, 1881.

Respectfully forwarded to the Adjutant-General of the Army.

P. H. SHERIDAN,
Lieut. General, Commanding.

[Third indorsement.]

HEADQUARTERS OF THE ARMY,
Washington, Sept. 20, 1881.

Respectfully submitted to the Secretary of War, with copy for the Department of the Interior.

W. T. SHERMAN,
General.

Claimant brought suit in the Court of Claims, and under the rules of that court had the testimony in support of his claim regularly taken. The court dismissed his petition on the ground that no contract existed between him and the United States.

We incorporate the opinion of the court in this report:

[Jean Louis Legare *v.* The United States.]

OPINION.

Weldon, J., delivered the opinion of the court:

This claim is founded upon a condition of facts incident to return of "Sitting Bull" and his warriors to the United States from Canada in the year 1881, preparatory to their surrender as a part of the force engaged in the battle of "Little Big Horn," in which General Custer was killed. The claimant is a citizen of the Dominion of Canada and resided at the time of said return at Willow Bunch, Wood Mountain, which is situated in the Province of Manitoba, about 150 miles north of Fort Buford, in the Territory of Dakota.

The following are the material allegations of the petition on which the claimant seeks to recover:

2. That during the years of 1881 and 1882, after the escape of "Sitting Bull" and his band of Indians from the United States, petitioner, by the direction of the commander of the post of the United States Army at Fort Buford, Dakota, undertook to secure the return and surrender to the United States of said Indians, which undertaking he accomplished; that for said work he claims from the United States for money expended, stores and supplies furnished, and for services rendered on behalf of defendant, the sum of thirteen thousand four hundred and twelve ($13,412) dollars. An itemized bill of his claim is as follows:

(1) 1881, April 20. Provisions, tobacco, and pipes furnished "Sitting Bull" and followers	$350.00
(2) Transportation and board for Indians, from Wood Mountain, Canada, to Ft. Buford, Dakota Territory, 150 miles, at $32 per Indian:	
1881, April 26, 16 Indians	512.00
1881, May 22, 32 Indians	1,024.00
1881, July 11, 200 Indians	6,400.00
(3) Transportation and board of Indians from Ft. Buford, Dakota, to Wood Mountain, Canada, 150 miles, at $32 per Indian:	
1881, May 4, four Indians	128.00
1881, June 1, three Indians	96.00
1881, July 19, one Indian	32.00
(4) Provisions furnished 12 lodges of Indians, about 50 or 60 persons, from April 26 to July 2, 1881	990.00
(5) 1881, July 2. Provisions and tobacco furnished "Sitting Bull" and followers, 300 Indians	225.00
(6) 1881, July 3. Twelve sacks of flour furnished "Sitting Bull" and three headmen, at $12	144.00
(7) 1881, July 11. One revolver to Sitting Bull	15.00
(8) 1881, July 11. One looking-glass for "Sitting Bull"	25.00
(9) 1881, July 11. To one lodge	12.00
(10) 1882, April 12. Board and clothing for one Indian, 9 months, at $40	360.00
(11) 1882, April 20. One year's services	3,000.00
(12) 1882, April 22. One pony, turned over to scout	45.00
(13) Use of pony from Aug. 25, '81, to Apr. 22, '82	54.00
Total amount claimed	13,412.00

Conceding the right of the post commander to make a contract, binding on the United States, for the services and supplies alleged, the petition is deficient in not alleging such a contract.

But as no point has been made by the defense on the sufficiency of the pleading we have considered the claim on its merits.

In the decision of this case it is not necessary to examine the right of the post commander to make a contract, such as is attempted to be alleged in the petition, as the facts found do not warrant the legal inference that a contract was made.

The eighth finding discloses the negotiations and understanding of the parties. Major Brotherton, acting on behalf of the United States, told said claimant that he (Brotherton) had no authority to contract on behalf of the United States to pay him for services rendered or supplies furnished the Indians during their return; but that he thought the Government would pay him a reasonable compensation for his time and supplies furnished the Indians; and that statement was received by claimant without dissent or objection.

That finding disposes of the claim as a legal demand against the United States, cognizable in this court, in this form of proceeding.

It will also be seen by the date of the services and the furnishing the supplies, that the statute of limitations had barred the most of the claim when the suit was commenced.

It is the judgment of the court that the petition be dismissed.

While it may be true that this case does not constitute a legal demand against the United States, yet your committee is of the opinion, from an examination of the record in the case, that the claimant rendered valuable service to the United States in causing the surrender of these hostile Indians, and in bringing to a close the Sioux Indian war.

It was due to the claimant's services and expenses that Sitting Bull and his band of Indians were induced to quit Canada and return to the United States and surrender to the military authorities.

It was at the instance of Major Brotherton, commander of the post at Fort Buford, Dakota, that claimant undertook the surrender of these Indians to the United States. They had become the subject of diplomatic correspondence between the Canadian Government and the United States.

The President, at the suggestion of the Canadian authorities, appointed a commission to visit these Indians and negotiate their peaceful return to the United States. This commission failed of its purpose. Various agencies were employed to secure the surrender of these hostile Indians by the officers of the United States Army. One, Allison, undertook the work under employment of Major Brotherton, in 1879, but failed. Major Crozier, commander of the Canadian mounted police, in conjunction with Major Brotherton, undertook the work, but failed. Then Major Brotherton sought the services of claimant, who successfully accomplished the delicate mission required of him.

General Terry, in his annual report for the year 1881, found in volume 1, Report of Secretary of War, 1881, p. 100, throws considerable light on the importance of the work Legare accomplished. He says:

My annual reports for the last five years contain a history of these hostilities, and it is unnecessary to do more than to refer to them now.

It will be recollected that at the date of my last report, notwithstanding the fact that large numbers of the hostile Indians had from time to time surrendered at Fort Keogh, a considerable body of them under the leadership of Sitting Bull remained in the northwestern British provinces, just beyond the boundary line, and constituted a constant menace to the peace of the border. Their number was sufficiently great to make them formidable, if not to our troops at least to the settlers in northern Montana and in the valley of the Yellowstone, and to their flocks and herds. Moreover, their attitude and position offered a great temptation to the dissatisfied and turbulent among the agency Indians of their nation to break loose from the control to which they are obliged to submit at their agencies and return to a wandering and predatory life. It was therefore extremely desirable that they should be brought into subjection in some manner. Though parties of them were frequently on our side of the line, it was nearly useless to send troops in pursuit of them, for their safe refuge on foreign territory was always so close at hand that their escape to it was all but certain.

Under these circumstances, in September, 1880, Maj. D. H. Brotherton, of the Seventh Infantry, commanding at Fort Buford, reported that the interpreter employed at his post, Mr. E. H. Allison, possessed great influence with the hostile Sioux, and could go among them with safety, and he suggested that Allison put himself in communication with Sitting Bull and other chiefs, and endeavor to induce them to return

to this country and surrender upon the terms upon which other bands of the hostile Sioux had surrendered.

Authority to send out Allison for this purpose was given, and he made several visits to those of the hostile Indians who were accessible to him. Protracted negotiations followed, and frequent promises to return and surrender were made by the Indians, but many excuses for delay were made, and the specific promises made were broken as often as they were made.

In the mean time, upon the application of the Indian agent at the Poplar River Agency for military protection, two companies of the Eleventh Infantry, under command of Capt. O. B. Read, of that regiment, were sent to that place with orders to establish a cantonment. These companies reached their destination on the 12th of October. They immediately commenced the construction of huts for shelter during the winter that was to follow.

As a consequence of Allison's negotiations, numerous parties of the hostile Indians arrived at Poplar River during the month of November and the early part of December until, finally, a considerable body of them had collected. When they first arrived they professed the most peaceable sentiments and announced their intention to proceed on to Fort Buford and surrender to the commanding officer of that post, but as their numbers were increased by successive arrivals they became turbulent and arrogant; they no longer held out promises to surrender; they even assumed a threatening attitude towards the garrison. Under these circumstances it became necessary to re-enforce the troops at the post.

* * * * * * *

On the 19th of July Sitting Bull came into Fort Buford and gave himself up. With him surrendered 187 souls, men, women, and children. On the 29th day of July these Indians were sent by steamer to Fort Yates. * * * It is understood that there are still some thirty-five families of Sioux at Wood Mountain and Quappelle. With this exception, all of the hostile Sioux are in the hands of the Government, and those who remain in the British provinces are too few in number and too much broken in spirit to leave room for apprehension of annoyance from them.

Claimant formed his plan to surrender these Indians, to the United States, soon after they came to his place. He then told Sitting Bull that he would feed them if they would surrender.

His statement of his expenses is corroborated by the testimony of other witnesses. He was a man of character and property. DcDonald, the British officer, who was in command of the Canadian police, after an acquaintance of twelve years, says:

Without exception he is the most honest man I ever met. I don't think he is capable of doing a dishonest act.

It is shown that he gave these Indians feasts and made them presents of flour and other articles to induce them to treat. It is a well-known fact that negotiations with the Indians are inaugurated by the giving of presents to the head men, or by feasts. As the claimant expresses it, the only way to get an Indian to do what you want is to feed him well. The Indian is not the only race that a good dinner influences. It is an important adjunct in all diplomatic negotiations, and large co-operative business ventures are generally launched under the good feeling effected by a satisfying meal.

If the amount of his claim seems large, the character of the work he was engaged in and the race of people with whom he was dealing, must be borne in mind.

Major Brotherton, when asked by his superior officer as to the amount Legare should receive, fixed the sum at $2,000 or $3,000. But it is clear from the testimony that he did not take into consideration the amount of expense to which claimant had been put in accomplishing the surrender.

Major Brotherton in his report to the adjutant-general Department Dakota, August 30, 1881, says:

That he (claimant) had been engaged in this business since the early part of May last. It has been followed up by him to the neglect of his business as freighter. He also had to feed these Indians, not only on the way in, but also for some time before they came in.

McDonald, who commanded the Canadian police force in the Northwest Territory, says that he depended on claimant's influence with Sitting Bull. That the other traders in the country were trying to prevent the surrender. That previous to Legare taking hold of it, every possible means had been taken to bring about the surrender but failed. That during his negotiations for the surrender Legare fed the Indians, and that from his talk with Major Brotherton he understood that Legare would be liberally dealt with by the American Government.

The large sums that had been spent by the Government and the anxiety of the American Government to end the Sioux campaign, led the claimant to go to the expense he did with the expectation that he would be liberally dealt with.

For these reasons your committee are of the opinion that claimant should be re-imbursed for his expenses and paid for his services.

But they are of the opinion that the prices charged for the supplies furnished and the services rendered are above the average price, and have reduced the amount claimed, and report back the bill with the following amendment: In line three strike out "$13,412," and insert "$9,000," and as amended recommend its passage.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 278.

SOUTHERN EXPOSITION AT LOUISVILLE, KY.

February 18, 1890.—Committed to the Committed of the Whole House, and ordered to be printed.

Mr. Bunn, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1306.]

The Committee on Claims have had under consideration the bill (H. R. 1306) for the relief of the Southern Exposition at Louisville, Ky., and beg leave to respectfully report:

A similar bill was presented at the last Congress, referred to the Committee on Ways and Means, favorably reported to the House, placed on the calendar, but not reached. Your committee adopt as their own the report made by the committee at the last Congress, report the bill favorably, with the recommendation that it do pass.

The report referred to is as follows:

The Committee on Ways and Means, to whom was referred the bill (H. R. 4771) for the release of the Southern Exposition at Louisville, Ky., from the payment of $435.90, duties upon certain goods consigned to it in 1885 from Russia for exhibition purposes, respectfully report the same, with the recommendation that it do pass.

The goods were consigned to the exposition for exhibition purposes, the exposition company receiving the same and executing bond for payment of duties as required by law. The goods were afterwards destroyed and can not be returned. The exposition company is insolvent, and the payment of the duties will, if enforced, have to be collected from the bondsmen. The committee think, as the goods were not sold but destroyed that the parties should be relieved from the obligations of their bond. A letter of the Secretary of the Treasury is filed herewith and made a part hereof.

Treasury Department, Office of the Secretary,
Washington, D. C., February 11, 1888.

Sir: I am in receipt of your letter of the 8th instant, in which * * * you inclose bill H. R. 4771, "for the relief of the Southern Exposition at Louisville, Ky.," together with "a statement of the facts by the president of such exposition," and requesting to know if there is any objection to the passage of the bill.

The bill prescribes that the Southern Exposition at Louisville, Ky., shall be relieved and discharged of all obligations to the United States for duty on certain lots of goods consigned to it for exhibition purposes from Russia in the year 1885, amounting in all to the sum of $435.90, more or less, and that the bonds executed by said company to pay said duty shall be canceled and held for naught, the said goods having been consigned to said exposition as exhibits of Russian industries, and not being intended for consumption in this country.

From the statement accompanying your letter it would seem that the exhibits in question were consigned to said exposition by Mr. E. G. Van Riper, who was then United States consul at Moscow; that they arrived late and were received at the exposition through the custom.house in the usual way, whereupon entries were duly made, and bonds given either for their exportation or for the payment of duty thereon in case they were not exported; that they consisted of goods which were entirely unfit for use in America, and were simply valuable as curious displays of Russian articles, such as hats, clothes, and common goods, and that since then, on ac-

count of the fact of their being stored in the exposition building, which is intended for summer use only, and is proof neither against cold, damp, moths, or rats, they have become worthless, and of no merchantable value whatever, the president of the exposition stating that "they probably would not sell for enough for taking them out of the building, hauling them to an auction house, and paying commission on sale."

Under the circumstances, and in view of the provisions of section 2984 of the Revised Statutes, which allow a remission of duties on goods injured or destroyed by casualty, while under bond or in the custody of the Government, the Department sees no objection to the passage of the bill.

Yours, respectfully.

HUGH S. THOMPSON,
Acting Secretary.

Hon. W. D. BYNUM,
U. S. House of Representatives, Washington, D. C.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 279.

SARAH McTAVEY.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. De Lano, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2832.]

The Committee on Pensions, to whom was referred the bill (H. R. 2832) granting a pension to Sarah McTavey, have considered the same and report:

The claimant's late husband, Eli Newell, was a private in Capt. B. Ballou's Company of Col. William Stone's One hundred and thirty-fourth Regiment New York Militia, war of 1812, from October 6, 1814, to November 14, 1814.

The claimant makes application for a pension at $12 per month, declaring that she was born in Canaan, Conn., February 24, 1790; that she was married at the age of fifteen years to Eli Newell, and that her husband and father both served in the war of 1812 and were honorably discharged. She states further that her said husband was sick when discharged and remained sick for three years, when he died, and during these years she supported herself, husband, and three children by sewing. Six years later she married Edward McTavey, who died in 1816, since which time to 1883 she earned her living by sewing; also that she has lately had to mortgage her house to pay taxes and repairs and can not raise any more money on it. Her only income is now about $120 a year, derived from renting the greater part of her house, and she is now an invalid needing the constant attendance of a servant, and is unable to obtain the actual necessaries of life.

The claimant's marriage to Newell, his death, her marriage to McTavey and his death, as well as her continued widowhood, are shown by testimony in the case.

Your committee are of the opinion that the relief prayed for should be granted, and the passage of the bill is therefore recommended.

51st Congress, } HOUSE OF REPRES
1st Session. }

RELATIVE TO OATHS IN PENSION

February 18, 1890.—Referred to the House Calenda

Mr. Buchanan, from the Committee on th
following

REPORT:

[To accompany bill H. R.

The committee on the Judiciary, to whom
R. 578), "in relation to oaths in pension a
following report:

This bill has been heretofore during this
reported with an amendment in the nature
H. R. No. 8, hereto appended). There was
which it could go, and the bill was recommi

It is now reported again, with the recom
ment by way of a substitute be adopted,
the bill do pass.

[House Report No. 8, Fifty-first Congre

The committee have had under consideration the
oaths in pension and other cases." They find the o
that the object would be perhaps better secured by

Early in the history of the practice before the Pens
attested by two attending witnesses, was practically
is required to be executed before a clerk of a court
the two attending witnesses in each case often have
pense which bears heavily upon them, to reach such
practice this paper has become but little more than
stantial averment in it is required to be subsequent
by auxiliary affidavits. These affidavits are not all
same class of officials named in the bill.

Your committee can see no reason for now affordin
passage of the accompanying substitute, and that
table.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 281.

FORMAN MATHEWS AND DAVID STOUT PARKER.

FEBRUARY 18, 1890.—Referred to the Committee of the Whole House and ordered to be printed.

Mr. BUCHANAN, of New Jersey, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 4329.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4329) for the relief of Forman Mathews and David Stout Parker, submit the following report:

This bill was favorably reported with an amendment February 7, 1890. As there was at that time no Calendar to which it could be referred, it was recommitted.

It is now again reported with the former recommendation adhered to, a copy of the original report being hereto annexed.

[House Report No. 36, Fifty-first Congress, first session.]

This bill passed the Senate in the last session of the Fiftieth Congress and was reported unanimously from the Committee on Claims in the House during that session, but was not reached upon the Calendar for want of time.

For the reasons set forth in the report of that committee, appended hereto, the committee recommend that the bill do pass when amended as follows:

Amend by adding to the bill the words "with leave to either party to appeal to the Supreme Court of the United States."

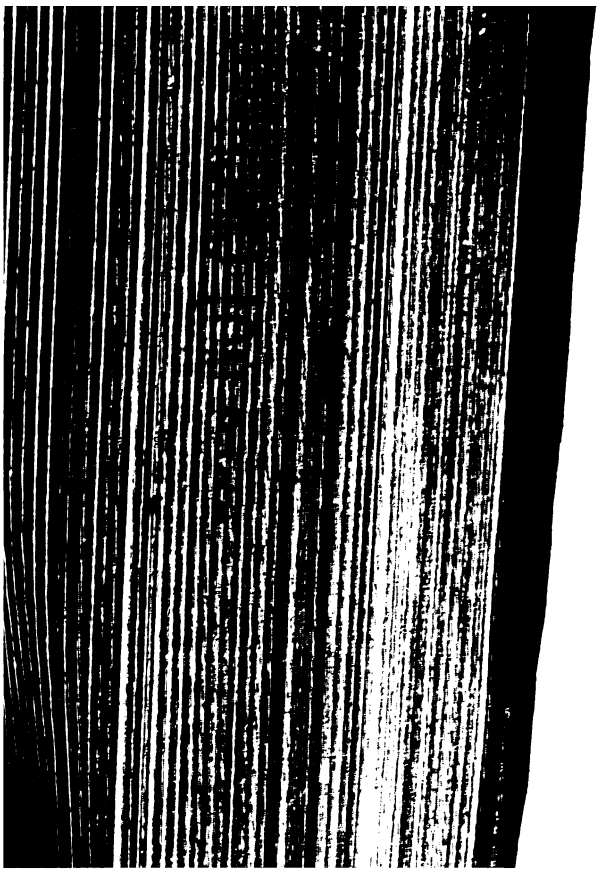
This claim was referred to the Court of Claims by the Senate Committee on Claims, January 26, 1884, for proceedings under section 1 of the act of March 3, 1883, commonly known as the Bowman Act. On the 21st day of February, 1888, the following proceedings of said court were certified to that committee:

[Court of Claims. Congressional cases Nos. 9 and 62. David S. Parker and Forman Mathews v. The United States.]

The claims in the above-entitled suits having been transmitted to this court by the Senate Committee on Claims and the Committee on Claims of the House of Representatives, and the Attorney-General having appeared for the defendants and the suits having been brought to a hearing, the court upon the proofs and evidence, and after hearing Charles F. Benjamin, esq., of counsel for the claimants, with whom was Henry W. Garnett, esq., and Lewis Cochran, esq., of counsel for the defendants, finds the following facts:

I.

The schooner *Twilight*, of Perth Amboy, N. J., laden with 363 tons of Cumberland coal, left Georgetown, D. C., April 26, 1864, bound on a voyage to Bergen Point, N. J. At 2 a. m. April 28 she anchored on the Horseshoe Shoal, in Chesapeake Bay, below Fort Monroe, because of darkness and threatening weather. About 8 a. m. she, as a measure of safety, weighed anchor and started for Hampton Roads, as other vessels about her were doing, desiring a better harbor.



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While the *Twilight*
steam frigate *Iroquo*
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was approved by him.

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VIII.

The steamer struck the schooner amidship, on the port side, cutting into her and causing her to sink in from three to five minutes in 14 fathoms of water, from which it was impracticable to raise her or to recover anything from the wreck.

IX.

The *Twilight* at the time of her loss was about nine months old, well built, seaworthy, efficiently equipped and manned, and very well furnished for a vessel of her class. Her cost price was $19,763, and her value at the time of her loss was $25,000, including the tackle, apparel, and furniture lost with her. Her freight money for the voyage upon which she was lost amounted to $833.20.

X.

The owners of the *Twilight* were David S. Parker and Forman Mathew, citizens of the United States and residents of the State of New Jersey; the claim has not been assigned and no part thereof has ever been discharged.

XI.

With an ebb-running tide and a crowded roadstead, the steam-ship's speed was greater than (under the circumstances that she was merely returning to an anchorage) was prudent even in the face of a head wind. The schooner was seen luffing in under the guardship's lee, with peak lowered; it was not an error of judgment to suppose that she would not suddenly fill away across the steam-ship's course. The fact that she would suddenly fill away for the purpose of standing out under the guardship's stern could hardly be anticipated. The master of the schooner erred in not looking to leeward before putting up his helm. Had he so looked he could have held his luff until the danger of collision was past. The pilot of the *Iroquois* erred in running at so great speed under the circumstances and in disregarding the warning of the commander. If, when the schooner put her helm up, the pilot had immediately given the orders that were subsequently given by the commander of the *Iroquois*, the *Iroquois* might have passed astern of the schooner instead of striking her amidships.

No reason is shown for the guardship's order to the *Twilight*, a peaceable vessel, pursuing a legitimate commercial voyage.

The statute under which the claim was referred to and considered by the court does not require nor authorize a finding of conclusions of law upon the facts judicially ascertained and reported, as above exhibited; hence, the committee is without the aid or advice of the court upon the question of the legality of the claim of these parties to be paid for their lost vessel. It is furthermore extremely difficult to gather from the statement of facts found by the court how far, if at all, the alleged rights and equities of the claimants are affected by the suggestion in Finding XI, that the master of the schooner erred in not looking to the leeward before putting up his helm; and the finding that had he done so he could have held his luff and the collision might have been averted.

From the statements of fact in Findings IV, V, and VI it would not seem that the master of the schooner could reasonably have anticipated the reckless and unnecessary change of course on the part of the frigate that resulted in the collision; and the statement in Finding XI, that the pilot of the frigate might have taken that vessel under the stern of the schooner after the putting up of the helm of the latter, may perhaps be construed as acquitting the schooner of the suggestion of contributory negligence contained in a preceding part of the same finding.

The pending bill proposes to remand the case to the Court of Claims, with jurisdiction, upon a full hearing, to enter such judgment therein as under the law and facts right and justice may require; and such a disposition of it seems to your committee not inappropriate, in view of the voluminous and complex facts of the case, as attested by the findings of the court. This was the course followed in the cases of the schooner *Ada A. Andrews* (act of June 22, 1874), the schooner *Flight* (act of January 12, 1877), and the schooner *Dom Pedro* (act of March 3, 1879), and it has the merit of enabling the rights of the United States and the citizens affected to be finally determined by the Supreme Court, under the operation of section 707, Revised Statutes.

The following cases, decided by the Supreme Court of the United States, will indicate very clearly the rules of law applicable to this class of cases, and from these it will be observed that, where the fault of the injured vessel bears but a small propor-

tion to the faults of the party causing the injury, it is not to be regarded as such contributory negligence as will defeat a right to recover:

Newton *v.* Stebbins, 10 How., 586.
The Oregon, 18 How., 570.
The Louisiana, 21 How., 1.
Haney *v.* Steam Packet Company, 23 How., 287.
The Carroll, 8 Wall, 302.
City of Paris, 9 Wall, 634.
The Maria Martin, 12 Wall, 31.
The Falcon, 19 Wall, 75.
The Great Republic, 23 Wall, 20.

The claimants have not asked for other or further relief than that proposed by the pending bill, namely, that their rights should be determined judicially.

Your committee, therefore, in view of all circumstances, are of the opinion they should be accorded this right.

The bill, therefore (S. 2013), is reported back without amendment, with the recommendation that it pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 282.

FEMALE NURSES IN THE WAR OF THE REBELLION.

February 18, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Thomas, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6469.]

The Committee on War Claims, to whom was referred the bill (H. R. 6469) granting relief to the female nurses in the war of the rebellion, report as follows:

There were a large number of patriotic women who, during the dark and bloody days of the rebellion, voluntarily gave their services to the Government as nurses, little expecting that the time would ever come when want would compel them to ask compensation at the hands of the Government. Many of them have died, leaving their ranks so thinned that the number who can claim the benefits of this act is greatly diminished. Many of the living are now old and infirm, without any means of support, and dependent upon the charities of personal friends and the public for the absolute necessaries of life. The humane services they rendered to our brave sick and wounded defenders, and the hardships they endured, together with the scenes of suffering they were compelled to witness has left many of them with shattered constitutions and impaired health. We further find that many of these brave and self-sacrificing women at the time refused to take the pittance of $12 per month offered them by the Government, but voluntarily turned the same into the hospital fund to purchase necessaries and delicacies for the sick and suffering under their charge, leaving them to bear their personal expenses out of their own private means. The sum of $12 per month then paid by the Government was a very inadequate compensation for the services rendered. At the time it was perhaps all we felt able to pay; but by the aid of these women the war was brought to a successful close, and we find ourselves with a Treasury full to overflowing, and we can now afford to do justice by this deserving class of our fellow-citizens. And while the Government may not be legally liable, to pay them an amount in excess of that promised at the time, or to refund to them the money voluntarily contributed by them as aforesaid, there is certainly a moral obligation resting on us to do them justice in some way. As Congress has in its wisdom saw fit to increase the pensions of many women who saw and endured no hardships during the war, and provided them with means by which they can live in luxury and splendor, and has selected a few of this class as special

favorites and placed them on the pension rolls, we think it but just that those who have been denied pensions should have their valuable and devoted services recognized in some substantial way. Many of these brave women not only gave their time, services, and money to their country, but gave their husbands and sons as martyrs to a common cause.

The committee in view of the foregoing statement of facts report back the bill and recommend its passage.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 283.

JOHN M. EDDY AND OTHERS.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Gest, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 3223.]

The Committee on War Claims, to whom was referred the bill (H. R. 3223) for the relief of John M. Eddy, Elizabeth K. Carroll, Alice B. Eddy, and Frank M. Eddy, report as follows:

The beneficiaries of this bill are the heirs at law of Mrs. Mary J. Eddy, deceased, who at the beginning of the war of the rebellion, in 1861 and 1862, owned a farm of 230 acres of land, with the necessary improvements thereon, near the town of Shawneetown, in the State of Illinois. About September, 1861, by proper authority, her said farm was taken possession of by the public authorities, and used for more than six months thereafter as a camping ground for United States troops. When she gave up possession of her farm there was an understanding that she was to be paid rent for her premises and also be reimbursed any damages of a permanent nature which her property should sustain by reason of such occupancy. The troops occupying her premises were regiments being recruited and organized for the field. After these troops had gone to the front she made application for compensation to the military authorities. A board of examination, consisting of Capt. George M. Humphrey and M. C. Nichols, was organized by order of the War Department. The board went upon the ground and took testimony, and made a personal examination. The board found that the value of the use of the premises and the damage done thereto amounted to $2,749.66, and that she had been paid the sum of $759.50, leaving a balance due her of $1,990.16. The committee is of opinion that this estimate of the said board is the fairest one in the case of the amount of her damage. She nor her legal representatives have ever been paid this balance. She has been referred to Congress therefor by the Quartermaster Department. She applied to the Forty-fifth and subsequent Congresses, but did not secure action on her claim.

The committee recommend the following amendments to the bill, viz:

In line 7 strike out the word "two" and insert the word "one" in lieu thereof.

In line 7 strike out the word "eight" and insert the word "nine" in lieu thereof.

In the same line strike out the words "sixty-nine" and insert the word "ninety" in lieu thereof.

After the word "dollars," in the 8th line, insert the words "and sixteen cents."

And that as thus amended the bill do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 284.

ECKINGTON AND SOLDIERS' HOME RAILWAY COMPANY.

FEBRUARY 18, 1890.—Referred to the House Calendar and ordered to be printed.

Mr. HEARD, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill S. 157.]

The committee to whom was referred the bill (S. 157) to amend the charter of the Eckington and Soldiers' Home Railway Company, having considered the same, submit the following report:

A bill for the same purpose, and substantially the same as the one under consideration, passed the Senate and was favorably reported by the House Committee on the District of Columbia in the Fiftieth Congress.

The report of the Senate committee upon the bill, made in the present Congress, being very full, and containing the report made to said committee by the District Commissioners in approval of the bill, your committee adopt the same, which is as follows:

The Committee on the District of Columbia, to which was referred Senate bill 157, has considered the same, and submits the following report:

A bill for the same purpose, and substantially the same as the one under consideration, was reported by the unanimous vote of the committee in the second session of the Fiftieth Congress, and passed the Senate and was favorably reported by the House committee, but was not considered by the House.

The bill under consideration was referred to the Commissioners of the District for such information as they could give as to the operations of the road, and especially as to the safety to the public in the use of electricity as a motive power, and their opinion as to the propriety of granting the extensions asked.

The report of the Commissioners is here inserted as follows:

OFFICE OF THE COMMISSIONERS,
DISTRICT OF COLUMBIA,
Washington, December 28, 1889.

SIR: In compliance with the request contained in your letter of the 13th instant, and the verbal request of Hon. Isham G. Harris, of your committee, the Commissioners of the District of Columbia have the honor to return herewith Senate bill 157, to amend the charter of the Eckington and Soldiers' Home Railway Company, with the following remarks:

This railway commenced the operations of its cars by electricity a little more than a year ago. At that time the application of electricity to such purposes was largely an experiment, and serious doubts were entertained regarding its safety and practicability. During the past year the Commissioners have watched this experiment and studied this problem with great interest. The results of experience have been noted from all parts of this country and Europe, and personal examinations of existing systems have been made.

As the result of these studies the Commissioners have arrived at the following conclusions:

(1) Up to the present time no method of operating cars by electricity through conductors laid under ground has been satisfactorily established by experiment.

(2) The method of operating cars through overhead conductors is the only system which actual practice has shown to be a success.

(3) Of the overhead systems now employed the Commissioners believe that the one used by the Eckington and Soldiers' Home Railway Company in which the conductors are supported by poles situated in the middle of the street is the most satisfactory where there is sufficient width of carriageway for its employment.

(4) The Commissioners believe that the electrical system employed by this railway, the electro-motive force of which can never exceed 500 volts, is as safe as any motive system ever employed by any railway. The Eckington Railway has never had any accident whatever resulting from its employment of electric motive power, and the Commissioners believe this to be also true of all other electric railways now in operation throughout the United States.

The Eckington Railway has been so admirably constructed and equipped, its operation has been so satisfactory to the public, and its success has been so much greater than its most sanguine friends could have anticipated that the Commissioners say without hesitation that the extensions provided for in this bill are generally in the public interest. They doubt, however, the advisability of authorizing the use of overhead wires on the First street branch within the city limits, as they consider that street too narrow for this purpose. This objection will be removed if, as the Commissioners suggest, North Capitol street should be substituted for First street in the company's charter, the former being considerably wider than the latter.

The correspondence with the president of the Eckington and Soldiers' Home Railway Company relative to this subject is herewith appended.

Very respectfully,

J. W. DOUGLASS,
President.

Hon. J. J. INGALLS,
Chairman Committee on District of Columbia, United States Senate.

DISTRICT OF COLUMBIA,
OFFICE OF THE ENGINEER COMMISSIONER,
Washington, December 20, 1889.

DEAR SIR: The Commissioners have received a letter from the Senate Committee on the District of Columbia, inclosing a copy of Senate bill 157, providing for the extension of the Eckington and Soldiers' Home Railway, requesting the Commissioners to report to the committee "the result of the practical operations of the electric system used on the Eckington and Soldiers' Home Railway during the past year, especially as to to its safety."

Will you kindly furnish me with any information that you may have in your possession bearing upon this point?

CHAS. W. RAYMOND,
Major of Engineers, U. S. Army,
Engineer Commissioner, D. C.

Mr. GEO. TRUESDELL,
President Eckington and Soldiers' Home Railway Company,
Washington, D. C.

WASHINGTON, D. C.,
ROOM 29, ATLANTIC BUILDING,
December 27, 1888.

DEAR SIR: I have the honor to acknowledge the receipt of your communication of the 20th inst., in which you request me to furnish for the use of the Senate Committee on the District of Columbia a report as to the result of the practical operations of the electric system used on the Eckington and Soldiers' Home Railway during the past year, especially as to its safety, and to make the following reply:

The Eckington and Soldiers' Home Railway Company was chartered on the 19th of June, 1888, and the main line of the road was completed and opened for traffic on the 17th of October, 1888. The Cemetery branch was completed in June, 1889, and the Fourth street extension to the Catholic University was finished on the 20th of October, 1889, making altogether about 3 miles of double track and half a mile of single track.

The report of the operation of the road for the first year was submitted to the stockholders on the 17th of October, 1889, a copy of which is hereto appended for your information. The road, as will be seen from said report, has been a great success, the receipts for the first year having exceeded the operating expenses by over $3,300, it being the first instance in which the receipts of any street-car line in the District of

Columbia have equaled its expenses during the first year of its existence. Considering that this is essentially a suburban road, with its terminus at New York avenue and Seventh street, it affords conclusive evidence of the popularity of the system. If anything further were needed upon this point, it is found in the fact that property on New York avenue between Seventh street and Boundary has doubled in value since the road was opened, while beyond Boundary the advance has been even greater, in some cases being as much as 400 or 500 per cent.

As to the danger of the electric current, it affords me great pleasure to be able to state that not one of the 503,000 passengers carried by our company has been injured by it; nor have any of our employés, although the latter have received frequent shocks. That the current used on our railway and on the other electric roads in this country is not dangerous to human life is further shown by what I am assured is the fact that although there are now 1,100 miles of electric tracks in use in the United States and over 800 electric cars, no passenger has been seriously injured by the current used to propel them. It may be proper to add that no passenger has been seriously injured by our cars in any manner whatsoever.

Yours, very respectfully,

GEO. TRUESDELL,
President Eckington and S. H. Ry. Co.

Maj. CHAS. W. RAYMOND,
Corps of Engineers, U. S. Army, Engineer Commissioner, D. C.

Report of the receipts and expenses of operating the Eckington and Soldiers' Home Railway for the year ending October 17, 1889.

Total number of passengers carried ..	503,860	Total receipts from passengers.....	$23,604.00
Daily average.....	1,505	Expenses of operating	20,256.72
Average daily earnings	$68.45	Excess of receipts over expenses	3,347.28

The committee is satisfied that the extension from the intersection of New York avenue and Fifth street northwest to Fifteenth street northwest will be a great convenience to the traveling public, as the present terminus of the road at the intersection of New York avenue and Seventh street northwest is an inconvenient point to reach, and generally involves an additional car fare to the passengers who get on or off at that point, while this extension will reach the business part of the city and make connection with the various car and herdic lines.

The committee adopts the recommendation of the Commissioners, and recommends the repeal of so much of the original charter as authorized the construction of the Soldiers' Home branch along First street, and authorizes the construction of a branch from the intersection of New York avenue and North Capitol street, along North Capitol street to the Soldiers' Home. This point of beginning is only three blocks from the northern boundary of the city, and North Capitol being a broad street, the laying of these tracks will be little if any inconvenience to wagon and carriage traffic, but a great convenience to that portion of the people of the city who do not keep their own carriages, enabling them to reach the beautiful grounds of the Soldiers' Home quickly and cheaply.

Upon this point the committee submits the letter of the Rev. John J. Keane, rector of the Catholic University, and the letter of the Washington Board of Trade, recommending the passage of the bill.

THE CATHOLIC UNIVERSITY OF AMERICA,
Washington, D. C., December 11, 1889.

RESPECTED DEAR SIR: Permit me, in the name of the trustees of this university, to ask of your Committee on the District of Columbia favorable consideration for the petition of the Eckington and Soldiers' Home Railway to extend their line to the corner of Fifteenth street.

This electric line is an incalculable advantage to us, and to the large numbers of the public at large who visit the university. This advantage to us and to the public would be very greatly increased if this excellent method of transit could bring us within immediate reach of so central a point as Fifteenth street. Twice a week we have lectures open to the public, at 4.30 p. m.; and the proposed extension of this railway would make it easy for persons in the Departments to reach the university before the hour of the lecture.

For these reasons I feel that it is not only permissible to me, but is even my duty, to urge upon yourself, dear sir, and upon your respected committee, the advisableness of granting the liberty of extension petitioned for.

Most respectfully, yours,

JOHN J. KEANE, *Rector.*

Senator INGALLS.

OFFICE OF THE WASHINGTON BOARD OF TRADE,
Washington, D. C., January 17, 1890.

SIR: I am directed by the chairman of the executive committee of the Washington Board of Trade to inform you that the railroad committee has carefully considered the inclosed Senate bill 157, entitled "A bill to amend the charter of the Eckington and Soldiers' Home Railroad Company," and believe its passage will be to the interest of the District.

Very respectfully,

ALEX. D. ANDERSON,
Secretary Board of Trade.

Hon. JOHN J. INGALLS,
Chairman Committee on District of Columbia, U. S. Senate.

This company was chartered by act approved June 19, 1889, and the main line of the road was promptly built upon the most approved plan and without regard to any expense necessary to its perfection and its safety. It has been in operation for more than a year, and during its first year's business it carried more than 500,000 passengers in safety and comfort.

In the opinion of the committee, it is the best electric railway in the United States, and vastly superior to any horse railway.

The committee reports the bill back with amendments, and recommends the adoption of the amendments and the passage of the bill.

Your committee, in order to supply what seems to have been an unintentional omission in the drafting of this bill, recommends the adoption of an amendment to make it clear that it is the intention of Congress that said bill is designed and shall be construed to be amendatory of the act of June 19, 1888, and not an independent act; so that while the railway company may by the present act receive the advantages to inure to it through the proposed modifications of its original charter, it will also be subjected to the restrictions and limitations contained in said charter, and which will thus be made applicable to the grants and privileges contained in both acts, should the present bill become a law.

(Amendment.)

SEC. 6. This act shall be considered as an amendment to the act of June 19, 1888, granting a charter to the Eckington and Soldiers' Home Railway, and shall be construed as being subject to all limitations and conditions of said original act except as specifically provided otherwise herein.

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51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 285.

THEODORE J. SHANDAL.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Laws, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3056.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3056) granting a pension to Theodore J. Shandal, submit the following report:

Applicant enlisted as a private in Company D, Fifth Connecticut Volunteers, August 25, 1863, and was honorably discharged July 19, 1865. He filed application for pension March 9, 1883, alleging rheumatism and injury of testicles, claiming that rheumatism came on gradually during the year 1863, and that injury to testicles was caused by being thrown from a horse at Alexandria, Va., in October, 1863, while in service of the United States; that he was well and sound before his enlistment, and that owing to above causes he has since his discharge been a great sufferer, and incapacitated for manual labor for from three to four months every year. His claim was rejected on the ground that he had testified to his inability to furnish testimony as to the origin of hernia, and of only one enlisted man as to rheumatism (Isaac Schatterman), and he in a previous affidavit testifies to having been in hospital at Nashville, and did not see claimant until after he was discharged.

Adjutant-General reports him carried as present on roll from September, 1863, to April 30, 1865. Has no hospital record, except as shown by regular physician's records, which show that he was treated for boils from September 19 to 24, 1864.

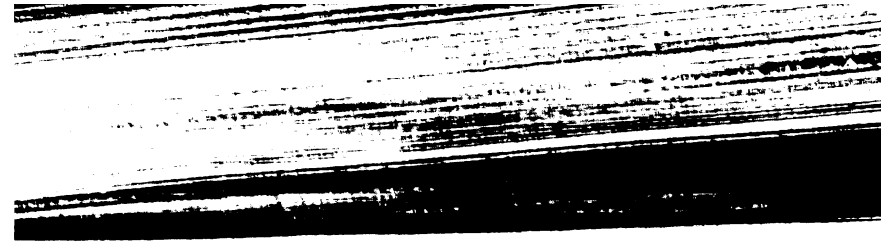
Elias Shuttman testifies to having known applicant from 1861, and from time of his discharge until 1886, and corroborate applicant's testimony as to his condition since his discharge, as do also Louis Wilkowski, Phillip Franklin, and other neighbors and his family physician, all agreeing that he is confined to his bed from three to four months as result of rheumatism and hernia, or injury to testicles.

Examining surgeon finds symptoms of rheumatism and cord of left testicle enlarged, and rate him as entitled to three-fourths rating for disability, caused by rheumatism, and one-fourth for that caused by varicocele.

It seems clear from the evidence that the claimant entered the Army a strong well man; that he came out of it more or less broken in health, caused from an accident received while in service, and from rheumatism, from which he has continued to suffer each year since coming out of the service, and that although not being able to prove beyond doubt that disease was contracted in service, yet presumption is strong that such is the case.

Your committee would therefore beg to report favorably, and that the bill pass.

O



51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 286.

W. P. ALEXANDER.

FEBRUARY 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LAWS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3055.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3055) for the relief of W. P. Alexander, submit the following report:

Applicant enlisted as a private in Company B, One hundred and ninety-fourth Pennsylvania Volunteer Infantry, July 12, 1863, and was honorably discharged November 5, 1864. He filed application for a pension August 17, 1882, alleging lung disease, which claim was rejected Janury 11, 1888, because of failure of applicant to furnish necessary testimony to establish origin of disease. Adjutant-General's records show no evidence of hospital treatment, and Surgeon-General says, "no hospital records of the One hundred and ninety-fourth Pennsylvania Volunteers were ever on file in his office." Dr. James D. Strawbridge on November 19, 1887, testifies to having been for many years the family physician of the applicant's father, that he was such at time applicant enlisted and knew him well, and never knew of his being sick prior to enlistment.

James Foster, of Danville, Pa., testifies to prior soundness. Claimant alleges that while in line of service as a guard of substitutes being transferred from Nashville, Tenn., to Atlanta, Ga., that he was obliged to ride on top of the box cars during a protracted and cold rain-storm, as a result of which he took a violent cold, which resulted in lung disease from which he has continued to suffer ever since.

James Foster, who was first lieutenant of Company B, One hundred and ninety-fourth Pennsylvania Volunteers, testifies to having kept a diary during his term of service, and says that the applicant was one of the eighteen guards who accompanied him to Atlanta in charge of a detachment of substitutes and recruits; that they were compelled to ride on the outside of freight cars, and were exposed to a severe rain-storm which prevailed all through the night of September 24, 1864, and that the entries in his diary show that they were four nights on the outside of those cars, exposed to rain and heavy dews; he testifies to having been in a hospital (the name of which he forgets) for a few days, and

that since his discharge he has been treated by various physicians, and taken a large amount of cod liver oil.

Examining physician, on September 6, 1882, says he finds applicant suffering from phthisis pulmonalis, with attendant symptoms, dry cough, and rates him at two-thirds total third grade.

Your committee believe from the evidence attainable that the applicant contracted lung disease, as he alleges, while in line of duty; and therefore beg to report favorably and recommend that the bill do pass.

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 287.

ANDREW J. FERGUSON.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Laws, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1581.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1581) granting an increase of pension to Andrew J. Ferguson, submit the following report:

Applicant enlisted as a private in Company B, Sixty second Pennsylvania Infantry, July 10, 1863, and was honorably discharged June 28, 1865. On December 19, 1883, he applied for a pension on account of chronic diarrhea, and was granted pension of $8 per month June 13, 1887. On July 21, 1887, application for increase was filed, on "account of disability resulting from chronic diarrhea, hemiplegia, paralysis of left leg and arm, and severe constipation and palsy," "producing inability to perform any manual labor whatever," necessitating the attendance of another person while dressing, undressing, and traveling by conveyance," etc. Application for increase was rejected January 21, 1889, on the ground that the paralysis is not shown to be a sequence of diarrhea.

James A. Barnes and Benjamin Sanders testify to being near neighbors of claimant, to seeing him almost every day, and that—

> He is totally incapacitated for the performance of any manual labor whatever, and that he does not or can not perform any labor, either manual, professional, or skilled.

Records of Surgeon-General show that the applicant was treated for chronic diarrhea while in hospital from May 20, 1864, to May 27, 1864. Examining physician reports his condition on November 7, 1888:

> General appearance feeble, skin pallid, flesh soft, tongue coated, stomach tender and flatuated, action of heart feeble; left side paralyzed, affecting arm and leg; has no use of left arm; muscles rigid, flexor muscles drawn at elbow; wrist and fingers rigid; very little sensation in left arm; left leg not affected so badly, can walk, but drags left leg; can do but little, if any, manual labor on account of paralysis; but is unable to say that the paralysis is due to chronic diarrhea.

Henry C. Campbell, a neighbor, testifies to having known applicant ever since he came out of the Army, and corroborates applicant's testimony, as do also several other witnesses whose character is vouched for. Applicant's age is sixty-one years, he has a family, and is partly supported by charity.

Your committee are of the opinion that he is entitled to an increase of pension, and would therefore recommend that the bill do pass.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 288.

JOHN McCOOL.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Laws, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1579.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1579) granting a pension to John McCool, submit the following report:

The claimant in this case made application for pension March 19, 1883, alleging wound of right thumb, received at Bird's Point, Missouri, August 10, 1861. The records in the Adjutant-General's Office furnish no evidence of the wound, and he offers no evidence whatever in support of the claim. The record shows that he served faithfully for four years and two months, and evidence has been furnished your committee that the soldier is now blind, that he has a family dependent upon him for support, and is without the means adequate to care for them; they would therefore recommend that a service pension of $12 per month be granted him.

The passage of the bill is recommended.

O

51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 289.

AUGUSTIN McLAUGHLIN.

February 18, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Laws, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1586.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1586) granting a pension to Augustin McLaughlin, submit the following report:

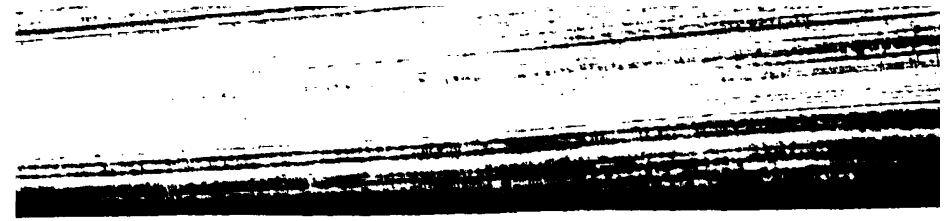
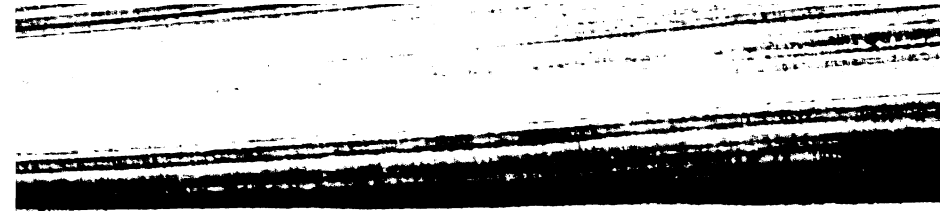
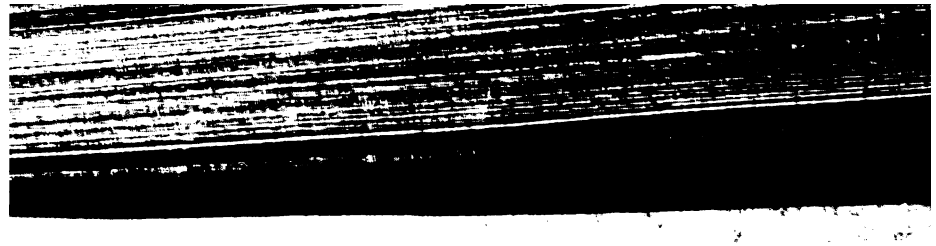
Petitioner enlisted July 10, 1862, and was discharged July 20, 1865. Filed claim for pension August 1, 1884, for dyspepsia contracted in the service April, 1863.

Claimant's corroborated testimony shows that he was not in hospital, and that he contracted the disease in April, 1863, in Arkansas, by reason of improper food, or for want of proper food.

Adjutant-General's records show nothing unfavorable to claimant; Surgeon-General's no evidence of disability.

A. H. Simpson, of Iowa County, State of Iowa, testifies to an intimate acquaintance with claimant from 1859 to date of enlistment, and that during all this time he was a strong and healthy man.

Claimant's father testifies to same fact, and that Augustin McLaughlin was broken down in health when he came home from the army, not able to do half a day's work.

Other witnesses testify to his enfeebled health all along from discharge to date. He is now partially paralyzed in left side. While it may not be possible to state a definite time when dyspepsia is contracted, there is evidence in this case to show that the claimant went into the army a well man, and returned broken in health and a dyspeptic.

Your committee would therefore recommend that the bill do pass.